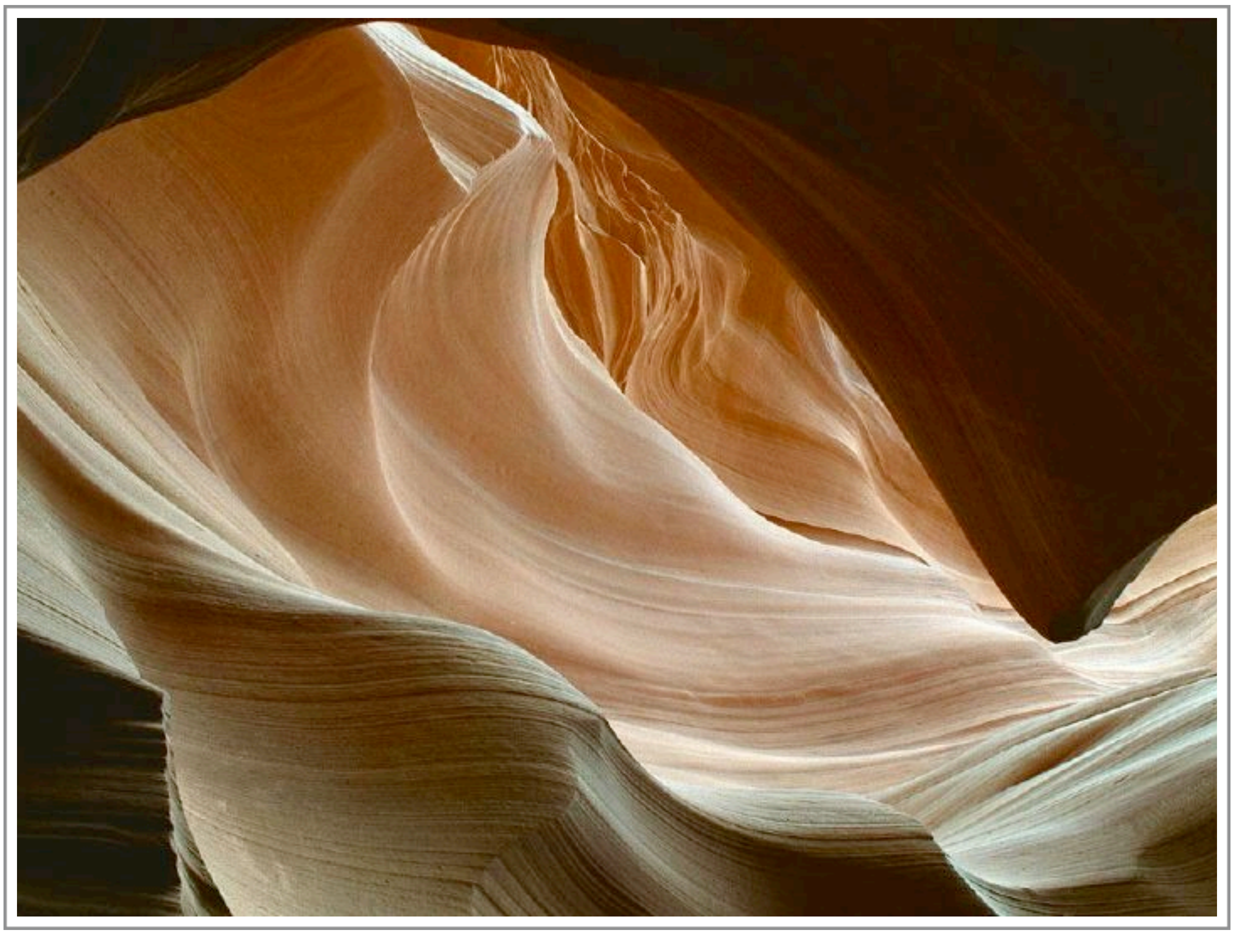
The Risala

Ibn Abi Zayd Al Qaywarani's Manual of Islamic Law



Translated by Aisha Bewley

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INTRODUCTION

Ibn Abi Zayd al-Qayrawani
(310/922 - 386/996)
The author of *ar-Risala*
An excellent scholar who dedicated his life to educating Muslims in the 4th Century (AH) in Tunisia.

Ibn Abi Zayd was known for his outstanding scholarship, excellent character and earnest worship. Because he was a Maliki scholar, some called him the "Young Malik."

Abu Muhammad, Abdullah ibn Abi Zayd was born in 310 AH (921 CE) in the city of al-Qairawan, which still carries the same name in today's Tunisia. And, even though biographers did not know much about his early childhood, they wrote much about his childhood experiences in his city.

Times were tough for the Muslims of North Africa, who were struggling under the reign of the Ubaidi governors. The Ubaidah, which controlled North Africa around 279 AH, was a heretical sect of Shia's that was determined to abolish Islâm from the area. All scholars who dissented with the new religion were persecuted and killed. Those who survived either had to hide or did not show their scholarship. Another major deviation from true Islâm was spread of extreme Sufism, which was encouraged by the Ubaidi governors.

Abu Muhammad devoted two of his books (ar-Radd al al-Bakri and Kash at-Talbeess) to answer some of the Bid'ah (innovations in the religion) believed by the Sufis. But, that era was also characterised by clear emphasis on education (tarbiyah) and spreading of knowledge ('ilm). And although most of that was done secretly, this trend represented the best way the Muslim scholars could devise to deal with

the forces of evil that overwhelmed the area for about two centuries. Indeed, education was the objective that underlined all of Ibn Abi Zayd's work.

Abu Muhammad's strong interest in education was fostered and encouraged in his own city, al-Qairawan, which remained a major Islâmic center for scholarship and education for many centuries. There, he had the opportunity of being the student of many scholars like Ibn al-Haddah, Ibn al-Labbad, Habib ibn ar-Rabi' among others. Also, many of his contemporaries were distinguished scholars in the various branches of knowledge. They all spoke highly of his knowledge and character. Most of al-Qairawan's masajid and schools were equivalent to modern-day universities. People came to this city seeking knowledge from everywhere, and many of them became Abu Muhammad's students and successors. Later, some of them wrote of his generosity and continuous efforts in helping his students pursue their studies.

Ibn Abi Zayd wrote about 35 books and treatises some of which consisted of a large number of volumes. One of the most famous books, An-Nawader waz Ziyadat, was recently published in a 15-volume edition that exceeded 8,000 pages. This book is considered an important encyclopedia of Fiqh. Abu Muhammad wrote it with the purpose of putting together a book that covers all aspects of the Islâmic Fiqh and includes summaries of all of the Maliki scholars up to his time. This encyclopedia truly reflects the profound scholarship and broad knowledge of its author.

His most important contribution, however, has been the book of ar-Risalah or the Epistle. This book, devoted to the education of the young, reflects the strong interest Abu Muhammad had in education, and thus gives him the prominent position one of the earliest proponents of education in history. The book is a summary of the main aspects of Aqeedah (Faith), Fiqh (Jurisprudence) and Akhlaq (character) and thus it explains the essences of education in terms of these three principles. It

was divided into 45 small, easy to read and understand chapters. Abu Muhammad wrote this book, which was his first, at the age of seventeen. The book was well received at the time but scholars' interest in it never subsided.

Today there are at least 50 books that were wrote at different times to interpret ar-Risalah, explain it or elaborate on it. Orientalists and other Western scholars have also shown wide interest in this book and its education methodology and the fact that it describes the educational stands of those times. Later, it was translated into English in 1906 CE by British Orientalist Russell, and into French by Fagnan in 1914 and Barcher in 1945.

(Hassan Ahmad, from Al Jumuah Magazine, Volume 12, Issue 9)

IBN ABI'S ZAYD'S PROLOGUE

Praise be to Allah who begins the creation of man as a blessing from Him and fashions him in the womb by His wisdom and brings him out into His tender care and to the provision He eases him to and teaches him what he did not know - "Allah's bounty upon him is ever great."

Allah makes him aware of Himself through the signs in what He has made and has left no excuse for him by virtue of what His Messengers, the best of His creation, have brought. He guides in His generosity, those whom He has granted success and He leads astray, in His justice, those for whom He has decreed debasement. He eases the believers to ease in both the worlds and opens their hearts to the Reminder. So they believe in Allah, pronouncing this belief with their tongues, being sincere about it in their hearts and acting according to what has come down to them through His Messengers and His Books. They learn what He teaches them and keep within the limits He has prescribed for them. They are

happy with what He has made halal for them and avoid what He has made haram for them.

May Allah assist both us and you in taking care of what He has entrusted us with and in holding to His Shari'a. You have asked me to write a short treatise for you about what is obligatory in the dîn - those things which should be pronounced by the tongue and believed by the heart and done by the limbs; and about those sunnas which are associated with these obligatory actions - the confirmed (mu'akkada), the optional (nafila) and the desirable (raghiba); something about the courtesies (adab) associated with them; along with certain of the key principles and derived judgements in jurisprudence (fiqh) according to the madh-hab and way of Imam Malik ibn Anas, may Allah have mercy on him; and in addition to mention what the great men of knowledge and fiqh have said about unclear matters in the madh-hab in order to make them easier to understand.

You have made this request because of your desire to teach these things to children in the same way that you teach them how to read the Qur'an so that they may first of all gain an understanding of the deen of Allah and His Shari'a in their hearts, which will hopefully bring them blessing and a good end result.

I have responded to this out of the same hope of gaining for both myself and you something of the reward of those who teach the deen of Allah or call to it.

Know that the best of hearts is the one which contains the most good and those hearts which are most likely to gain good are the ones which no evil has been able to get into. The thing that the people of advice are most concerned about and which those who desire its reward most want is to put good into the hearts of the children of the believers so that it becomes firmly established in them; and to make them realise what the bases of the deen and the limits of the Shari’a are in order that they may

be satisfied with that and to make them realise those things in the dîn which their hearts have to accept and their limbs are required to do.

It is related that teaching the Book of Allah to young children extinguishes the anger of Allah and also that teaching something to someone in their childhood is like engraving it on stone.

I have made these things clear and if Allah wills they will get benefit from learning them, nobility from knowing them and happiness from believing them and acting according to them.

It has come down to us that children should be ordered to do the prayer at seven years old and beaten for not doing it at ten years old and be separated in their beds. Similarly, they should be taught before they reach puberty those words and actions which Allah has made obligatory for people so that when they reach puberty these things are fixed in their hearts and they are at ease with them and their limbs are used to doing them. For Allah has made certain beliefs obligatory for the heart and certain acts of obedience obligatory for the limbs.

I will arrange what I have undertaken to talk about in chapters so that it will be easier, if Allah wills, for those who are studying it to understand. It is Him we ask for guidance and Him we ask for help. And there is no power nor strength except by Allah, the High, the Mighty. May Allah bless our Master Muhammad, His Prophet, and his family and Companions and grant them much peace.

CHAPTER 1: CREEDS

The obligatory matters of the *deen* that the tongue should give expression to and in which the heart should believe.

This chapter makes clear what a Muslim should express in words and what hearts should believe. It contains about a hundred items of creed (*'aqida)*, which can be divided into three basic categories: that which must be believed about Allah Almighty, that which is impossible in respect of Allah, and that which is permissible in respect of Him.

These are matters which all those who are legally responsible must believe.

1.1 BELIEFS REGARDING ALLAH

1.1a Tawhid - Allah's Oneness and Disconnection from Creatures (*tanzih*)

These obligatory tenets include believing in the heart and expressing with the tongue that Allah is One God and that there is no god other than Him, nor is there any like Him, nor any equal to Him.

[Belief is expressed on the tongue and confirmed by sincerity in the heart and action by the limbs. Thus it is composed of all three aspects. Nonetheless, simple belief in the Oneness of Allah will save a person from being in the Fire for all eternity.

The belief that Allah is One is the fundamental basis of Islam, and when Divine Unity is expressed, the name "Allah" must be used. It is not permissible to say, "There is no god but the Almighty" or use any other

names except Allah for the *shahada*. Nothing at all resembles Him or is equal to Him.]

[Al-Kalbi mentions that the clear evidence for this is found in four *ayats*: "*If there had been any gods except Allah in heaven or earth, they would both be ruined*" (21:22); "*Say: 'If there had been other gods together with Him as you say, they would have sought a way to the Master of the Throne'*" (17:42); "*Allah has no son and there is no other god accompanying Him, for then each god would have gone off with what he created and one of them would have been exalted above the other*" (23:91); and "*But they have adopted gods apart from Him which do not create anything. They are themselves created.*" (25:3)

1.1b. Lack of Associates

He has had no child. He had no father. He has no wife. He has no partner.

[See Qur'an 112: "*Say: He is Allah, One with no other, Allah the Everlasting Sustainer of all. He has not given birth and was not born and there is no one equal to Him,*" and "*And say: 'Praise be to Allah Who has had no son and Who has no partner in His Kingdom and Who needs no one to protect Him from abasement.'*" (17:111)

He is totally unique. If he were to have a wife or partner, that would imply need, and He is absolutely beyond need.]

1.1c. Lack of Temporality

There is no beginning to His firstness nor any end to His lastness.

[His existence does not begin with firstness so that there is a point at which He could be said to begin nor does He have a point at which He

could be said to end. He exists eternally, out of time, before time and after time.]

1.1d. Ineffability and Indefinability

Those who try to describe Him can never adequately do so nor can thinkers encompass Him in their thought. Real thinkers may derive lessons from His signs but do not try to think about the nature of His Essence. "*But they do not attain any of His knowledge except what He wills.*" (2:254)

[It is impossible to grasp His true description, let alone His Essence. Thinkers must learn through the Signs which indicate the splendour of His Power, but must not attempt to reflect on the nature of His Essence because the Prophet said, "Reflect on His creation, but do not reflect on His Essence."]

1.1e. His Footstool

"*His Footstool embraces the heavens and the earth, and their preservation does not tire Him. He is the Most High, the Magnificent*" (2:254)

[He has full control and authority over all creation, high and low, and His preservation of them is no burden for Him.]

1.1g. His Attributes

The All-Knower and the All-Aware, the Arranger and the All-Powerful. The All-Hearer and the All-Seeing. The High and the Great. He is over His Glorious Throne by His Essence.

[He has knowledge of all things, and complete power and authority over all things. His hearing and vision are connected to all things in existence.]

[He used the words "by His Essence" to remove the possibility of giving form because of the relation of "over" to "Throne". "Above" means higher than or beyond something. It can be used metaphorically for concepts. Here it designates honour and overwhelming power.]

1.1g. His Knowledge

He is everywhere by His knowledge. He created man and He knows what his self whispers to him and He is nearer to him than his jugular vein. No leaf falls without him knowing of it nor is there any seed in the darkness of the earth, nor any wet thing nor any dry thing, that is not in a clear book.

[He knows our inner dialogue and thoughts. He is closer to man that his jugular vein, which is his physical body, and so He is closer to man than his own physicality. "*We created man and We know what his own self whispers to him, and We are nearer to him than his jugular vein*." (50:16) In addition to the universal scope of His knowledge, He knows the precise details, like each individual leaf which falls – and it only falls by His will and in accordance with His knowledge. Everything is encompassed by His knowledge, dead or alive, growing or dormant. "*The keys of the Unseen are in His possession. No one knows them except for Him. He knows everything in the land and sea. Not a leaf falls without His knowing it. There is no seed in the darkness of the earth, and no wet thing or dry thing, but that it is in a Clear Book.*" (6:59)]

1.1h. Mastery Over All Creation

He is settled on His throne and has absolute control over His kingdom.

[No one knows the true interpretation of this expression. Imam Malik was asked about it and said, "'Settling' is known but 'how' is not known." Nothing is hidden from Him and His control is absolute. "*He then established Himself firmly on the Throne*." (10:3, etc.)]

[This is one of the ambivalent (*mutashabihat*) expressions of the Qur'an. Scholars like Ibn Shihab and Malik forbade delving into its interpretation. They said, "We believe in it and do not turn to its meaning". Some allowed clarification of it.]

1.1i. His Names and Attributes

He has the most beautiful names and the most sublime attributes and He has always had all these names and attributes. He is exalted above any of His attributes ever having been created or any of His names having been brought into temporal existence.

[He is described by the best and noblest of the meanings of His Names. He has attributes like power, will, height, and so forth. He is high exalted over any imperfection or lack. These Names have always been His and will remain His. Thus neither His names nor His attributes are created. They are simply His. "*To Allah belong the Most Beautiful Names*" (7:180)]

1.1j. His Speech and Manifestation

He spoke to Musa with His speech which is an attribute of His essence and not something created. He manifested Himself to the mountain and it disintegrated through exposure to His majesty.

[Allah spoke to Musa with His timeless words and Musa actually heard His timeless speech. "*When Musa came to Our appointed time and his Lord spoke to him, he said, 'My Lord, show me Yourself so that I may look at You!' He said, 'You will not see Me, but look at the mountain. If it*

remains firm in its place, then you will see Me.' But when His Lord manifested Himself to the mountain, He crushed it flat and Musa fell unconscious to the ground." (7:143)]

['Adawi: He created for Him an understanding in his heart and a hearing in his ears by which He heard words which had neither voice nor letter. He heard it from every side and in every limb. By "not something created", it is possible that he means that it was not a creature which spoke to Allah. Rather Allah spoke to him. It is also possible that he meant that the words with which Allah spoke to Musa were timeless and not created.]

1.2 Belief in the Qur'an

The Qur'an is the speech of Allah, not something created which must therefore die out, nor the attribute of something created which must therefore come to an end.

[The Qur'an is the speech of Allah which is not created and is timeless, outside of temporal time. Hence it will not end as creatures must end, but will abide endlessly.]

1.3 Belief in the Decree (Qadar)

1.3a. The Prior Decree of Good and Evil

Also included is belief in the Decree both the good of it and the evil of it, the sweet of it and the bitter of it. All of this has been decreed by Allah, our Lord. The way things are decided is entirely in His hand and the way they happen is according to His decree. He knows all things before they come into existence and they take place in the way He has already decided.

[It is necessary to believe that all things, good and evil, are decreed by Allah and nothing escapes His will and thus only what He wills occurs in His kingdom. All things and their being are brought into existence from the concealment of non-existence to the domain of manifestation in their myriad aspects and forms – long and short, at one time rather than one, in one place rather than another. All of that occurs and issues directly from His Decree according to His knowledge and is dependant on His will.]

['Adawi: This entails belief in three: His knowledge, power and will.]

1.3b. Prior Knowledge

There is nothing that His servants say or do which He has not decreed and does not have knowledge of. "*Does not He who creates know, when He is the Subtle and the Aware*." (67:14)

[He knows everything which happens before it happens. It only occurs in accordance with His knowledge of it.]

1.3c. The Prior Predisposition of People

He leads astrays whomever He wills and in His justice debases them and He guides whomever He wills and in His generosity grants them success. In that way everyone is eased by Him to what He already has knowledge of and has previously decreed as to whether they are to be among the fortunate or the wretched.

[Every man has prior disposition to what Allah already knows about him being happy or wretched because Allah only created man according to His knowledge. See Qur'an 14:4, 3:160, etc.]

1.3d. Exaltedness of Allah's Power

He is exalted above there being anything He does not desire in His kingdom, or that there should be anything not dependant on Him, or that there should be any creator of anything other than Him, the Lord of all people, the Lord of their actions, the One who decrees their movements and the time of their death.

[The power of Allah is so immense and vast that there is nothing which is not directly under his authority and subject to His will. All things - might and abasement, wealth and poverty, pious actions and all things are subject to His will and power.]

1.4 Belief in the Messengers and Muhammad

1.4a. The Sending of Messengers

He has sent Messengers to them in order that they should have no argument against Him.

[The first of the Prophets was Adam and the last was Muhammad, may Allah bless him and grant him peace. One must believe and accept that Allah sent the Messengers to those who are legally responsible, i.e adult and sane, and they conveyed the Message. The wisdom of sending the Messengers is that it removes any excuse which creatures might offer about not having heard the Message.]

1. 4b. The Final Messenger

He sealed this Messengership, warning, and Prophethood with his Prophet Muhammad, may Allah bless him and grant him peace, whom He made the last of the Messengers - "*A bringer of good news and a warner, calling to Allah by His permission and an illuminating lamp.*"

[Revelation, which is warning and prophethood, which is informing about what Allah has said, reaches its end with the Prophet Muhammad. There will be no Prophets after him. He brings the good news that whoever follows him will be happy and whoever does not will be punished. He calls to Allah, conveying *tawhid* to the legally responsible, and fighting the unbelievers. He is an illuminating light because his Shari'a is a light which guides the bewildered – whoever follows it and proceeds along the Straight Path will emerge from the darkness of disbelief to the light of belief.]

1.4c. Divine Guidance Through The Book

He sent down on him His Wise Book and by means of him He explained his upright *deen* and guided people to the Straight Path.

[One must believe and affirm that Allah revealed to His Prophet Muhammad, may Allah bless him and grant him peace, a Book containing judgement and wisdom to which no falsehood at all comes. Allah opened and expanded the Straight *Deen* of Islam through His Prophet. Thus He manifests its judgements and clarifies that on the tongue of His Prophet. Allah only sent down the revelation to us so that it would be clear to people. The guidance of Muhammad, may Allah bless him and grant him peace, is the sun of knowledges, the source of right guidance and the fount of certainty which guides people to the Straight Path.]

1.5. Belief in the Resurrection and Judgement

1.5a. The Last Hour:Also part of what must be believed is that the Final Hour is coming - there is no doubt about it .

[Cf. 40:59. This must be confirmed and believed and the one who denies that the Final Hour will come is an unbeliever. However, but only the All-Knower of the Unseen knows when it will actually come.]

1.5b. Resurrection of the Dead

It must be believed that Allah will raise up all who have died: "*As He brought them into existence the first time so they will be brought back again;*"

[It must be believed that He will bring the dead back to life after they were dead and bring them back for the Gathering. There is no disagreement among Muslims that it will occur, but there is disagreement about whether He will bring them back from absolutely nothing or back from dissolution through a reconstitution of their parts.]

1.5c. Divine Reward: Multiplication of Good Actions

It must be believed that Allah, glory be to Him, multiplies the reward of the good actions of His believing servants.

[It must be believed that Allah will multiply good actions for the believers according to sincerity and degrees of humility, so that multiplication can be from ten to 700, in other words, a great deal. Ibn Hanbal transmitted that Allah multiplies the good action a thousand thousand times. This means the reward for doing them. The "good action" is what is praised in the Shari'a, and what is the opposite of that is a "bad action", which is what the Shari'a considers reprehensible.]

1.5d. Pardoning Wrong Actions

He pardons them for their major wrong actions by virtue of their repentance (*tawba*) and He forgives them for their minor wrong actions by virtue of their avoidance of the major wrong actions.

[Part of His bounty to His believing servants is that if anyone does any major wrong actions and then repents and makes amends, He will

pardon Him by His favour and generosity. Small wrong actions are expiated by avoiding major ones.]

1.5e. Those Who Do Not Repent Are Subject To His Will

Those who do not repent of their major wrong actions become subject to His will. "***He does not forgive anything being associated with Him, but He forgives anything other than that to whoever He wills.***"

[Those believers who commit major wrong actions and die without repenting of them are subject to the Will of Allah. If He wishes, He will forgive them out of His favour. If He wishes, He will punish them out of justice. He may forgive everything except for associating others with Him.]

1.5f. Deliverance From The Fire Because of Belief

Those He punishes with His Fire, He will remove from it because of any belief they have and by this He will cause them to enter His Garden. "***Whoever does an atom's weight of good will see it.***" **(99:7)**

[It must also be accepted that if Allah wills that the rebels among the believers be punished in the Abode of Punishment, their punishment will be commensurate with what they have brought on themselves by their evil deeds and then mercy will envelop them and they will emerge from the Abode of Punishment and enter the Abode of Peace. Whoever has the weight of atom of belief in his heart will not be in the Fire forever. Thus belief is a reason for not being forever in the Punishment and a reason for entering the Garden with Allah's pardon and mercy.]

1.5g. The Intercession of the Prophet

Any of the community of the Prophet, may Allah bless him and grant him peace, who have committed major wrong actions and for whom he intercedes, will be brought out of the Fire by his intercession.

[The intercession of the Prophet and others must be affirmed. He is singled out for mention because he is the first intercessor and by the intercession of our Prophet the people of major wrong actions of his community of unifiers will emerge from the Fire. The Mu'tazilites deny intercession, based on the lack of permission to pardon and overlook wrong actions, but we defer to transmitted evidence and they hold to merely logical evidence. Transmitted evidence is more sublime and radiant.]

1.6 THE AFTERLIFE: THE GARDEN AND THE FIRE

1.6a. The Garden

Allah has created the Garden and has made it ready as an everlasting abode for His friends *(awliya')*. He will honour them in it with the vision of His Noble Face. This is the same Garden from which He sent down Adam, His Prophet and Khalif, to the earth, which was as it had already been decreed in His foreknowledge.

[Allah has created the everlasting abode of the Garden for the believers in which they will have no toil or fatigue, but will be rejoicing and will be blessed by contemplation of His Face. See 75:23.]

1.6b. The Fire

He has created the Fire and has made it ready as an everlasting abode for those who disbelieve in Him and deny His signs and Books and Messengers and He keeps them veiled from seeing Him.

[He created the Fire as an eternal abode of punishment for those who deny and reject Him and ignored the evidence which indicates the existence and oneness of the Creator and denied His revealed Books and Messengers. They will abide in the hatred which is the result of disbelief and they will be veiled from seeing their Lord on that day.]

1.7 Details of the Resurrection

1.7a The Coming of Allah and the Angels

Allah, may He be blessed and exalted, will come on the Day of Rising together with the angels, rank upon rank.

[It is confirmed by transmission that on the Day of Resurrection Allah will come with angels in ranks. That must be believed, and its knowledge comes from the Lawgiver. Malik and others say about this *ayat* (89:22) and others that they are read as they have come without qualification. We take what they say literally but do not compare that to any creature.]

1.7b. Presentation of Peoples

All the different peoples are confronted with their accounts and their punishment or reward.

[All the different peoples will come to present themselves so that their states was be investigated and reckoning taken for their actions. The actions of those who present themselves for the Reckoning will have

their good and bad actions ennumerated. The believer will be called to account with graciousness and favour, and the hypocrite and unbeliever with evidence and justice. So Allah Almighty will say to the believer, "I veiled it for you in the world and I forgive it for you on the Day of Rising." The unbelievers will be reckoned in front of of witnesses and those who they denied will be summoned to their Lord, "The curse of Allah on wrongdoers."]

1.7c. The Balance

The balances will be set up to weigh people's actions - "Whoever's actions are heavy in the balance - they are the successful."

[See 21:47; 101:6. The balances will be set up to manifest justice so that no one will be wronged even the weight of a mustard grain. Allah will bring all the person's actions, even to an atom's weight, on the Day of Resurrection. Whoever has his balance heavy will be successful and achieve a happiness after which there will be no misery. Whoever has his balance light will be wretched and will have no happiness after his wretchedness.]

1.7d. The Books of Actions

People will be given pages on which their actions are recorded - "*Whoever is given his book in his right hand will be given an easy accounting and whoever is given his book behind his back - they will burn in a Fire.*" (84:7-13)

[Nations will be given their pages which contain their actions. When they are given them, Allah will create knowledge in them and they will understand what they contain. If someone is given his book in his right hand, that indicates that he is one of the people of the right hand and happiness. If someone is given his book in his left hand, that is an indication that he is one of the people of misery." The receiving of the

books should actually be put before the balance and weighing of acting because the weighing is after the Reckoning and the Reckoning is after receiving the Books.]

1.7e. The Sirat

The Bridge (*sirat*) is true and people will cross it according to their actions. Those who cross it, and achieve safety from the Fire, do so at different speeds, while the actions of others cast them to their destruction in the Fire.

[There is a great deal of description of the Sirat and it is said that it is finer than a hair and sharper than a sword. Al-Qarafi, on the other hand, says that it is wide with two paths on it, one to the right and one to the left. The people of happiness travel on the right and the people of wretchedness on the left.

There are ropes on it and each rope leads to one of the levels of Jahannam and Jahannam lies between the creatures and the Garden. The Sirat is set up over Jahannam, and none of the people of the Garden enters the Garden until he has crossed over the Sirat.

People will cross over the Sirat according to the disparity in their actions and avoidance of the things forbidden by Allah. Some will pass over like lightning. Some will escape the hooks, some will be scratched but released, and some will be caught by the hooks and tipped into the Fire of Jahnnam.]

1.7f The Basin

Also included is belief in the Basin (*hawd*) of the Messenger of Allah, may Allah bless him and grant him peace, which his community will come down to drink from after which they will never feel thirst

again. But those who make any changes or alterations in the *deen* will be driven from it.

[It is necessary to believe in the Basin of the Messenger of Allah, may Allah bless him and grant him peace. He will drive away from it those who alter things, like the apostates, but those of his followers who follow him with the best will drink from it when they leave their graves thirsty. Whoever drinks from it will never feel thirst again.]

1.8 Belief

1.8a. Definition of Belief

Belief consists of what you say with the tongue, what you believe sincerely in the heart, and what you do with the limbs.

[Belief is articulation of the *shahada*, belief in the truthfulness of the Messenger and what he brought in the heart and then acting according to the judgements of the Shari'a, like praying and fasting. Someone with all of these three is a believer. If someone believes that belief does not consist of these three and imagines that what the author said was due to his inclination to what belief obliges because there is consensus that someone who believes with his heart, speaks with his tongue and acts with his limbs is a believer. If he does not believe that belief consists of these three, he takes it as a preface to the words which follow:]

1.8b Increase and Decrease of Belief

Belief increases when your actions increase and decreases when they decrease. So it is through actions or the lack of them that increase and decrease in belief occurs.

[Belief increases according to actions and decreases according to actions. This increase and decrease is in relation to its fruits. This is the

school of the early and later people of the community, and this is the final position taken in the matter by Malik. He first had said that belief increases and does not decrease. Applying the name"belief" to action is agreed upon. The Almighty says, "*Allah would not let your belief go to waste,*" which referred to the prayers they did facing Jerusalem before the change of the *qibla* to Makka.]

1.8c. The intention and Following the Sunna

The statement of belief is not complete without action. Neither the statement nor action are complete without intention. And neither the statement nor intention are complete unless they are in accordance with the *Sunna.*

[Actions and words are according to intentions. The intention is the fulcrum upon which actions are based, and so a man should only base his actions on the pure *Sunna* and Straight Shari'a and follow the Rightly-guided khalifs.]

['Adawi: "Complete" means "sound".]

1.8d. Islam and Wrong Actions

No Muslim becomes an unbeliever (*kafir*) through wrong actions.

[It must be believed that no Muslim who commits a wrong action becomes an unbeliever as long as he believes. The same applies to someone who commits acts of disobedience while he nevertheless believes that the Shari'a forbids them. If someone does something which demonstrates that he lacks belief, like throwing a copy of the Qur'an into the rubbish, then he is an apostate. We are not discusssing him. The Prophet said, "Whover faces our qibla and eats our sacrifices is truly a believer." The Kharijites were heretics when they said that every sin is a major wrong action and every major wrong action removes actions and

the one who does that is an unbeliever. The Mu'tazilites said that every major wrong action renders actions void and the one who commits such an action is between two stations, and he is not called a believer or an unbeliever. He is called a deviant (*fasiq*).]

['Adawi: This is the position of all of the people of the Sunna, the Salaf and later ones, except for the Kharijites and Mu'tazilites. However, Ibn Habib Ibn 'Abdu'l-Hakam and some others said that someone is a *kafir* if he deliberately abandons the prayer or zakat, fasting and hajj.]

1.8e. Martyrs

Martyrs (*shuhada'*) are alive, receiving their provision in the presence of their Lord.

[It is obligatory to believe that the marytrs, those who fought the unbelievers and were killed in the way of Allah to elevate the word of Allah, are alive and delighting in the Presence of their Lord because of the privileges they have been granted, one of which is that they will be secure from the Greatest Terror on the Day of Rising. See Qur'an 3:169.]

1.8f. In the Grave: the Spirits of the Fortunate

The spirits of the fortunate remain in bliss until the day they are raised again.

[The souls of the fortunate will remain in bliss until the Day of Rising seeing their place in the Garden. When one of them dies, he is shown his place in the Garden morning and evening.]

1.8g. In the Grave: the Spirits of the Wretched

The spirits of the wretched are tormented until the Day of Judgement.

[The souls of the wretched are punished by seeing their place in the Fire and other punishments.]

1.8h. The Questioning in the Grave

The believers are tried and questioned in their graves. "*Allah makes those who believe firm by giving them firm words in the life of this world and the next world.*"

[This refers to the questioning by the two angels in the grave. The dead person will be placed in his grave and people will leave him and then two angels come and sit with him and ask him, "Who is your Lord? What is your *deen*? Who is your Prophet?" The believer will reply, "My Lord is Allah. My *deen* is Islam, My Prophet is Muhammad," and his grave will be wide for him. When the unbeliever is in the grave and is asked these questions, he will reply, "I do not know," and so he will be dealt a blow from an iron hammer and will scream so that all creatures except men and jinn will hear him. Also reported is the constriction of the grave, which is the pressing on the sides of the body of the dead person and none is safe from that except the one whom Allah grants an exception - they include Fatima bint Asad, the mother of 'Ali ibn Abi Talib, because of the blessing of the Prophet going into her grave, and whoever recites *Surat al-Ikhlas* in his final illness."]

1.9 THE ANGELS

1.9a. The Recording Angels

People have recording angels over them who write down their actions. Nothing people do escapes the knowledge of their Lord.

[Men and jinn, believers and unbelievers, free and slave, have recording angels who write down their actions, even the permissible ones and the groan in illness, and even the actions of the heart, like all the thoughts

which occur to it. Allah has given the heart a token by which it can distinguish between the good and bad action. The source for the knowledge of that is the words of the Almighty, "*Standing over you are guardians, noble, recording. They know everything you do,*" (82:10-12) and the words of the Prophet, "The angels of the day and night succeed one another." There is consensus on that. None of the actions are hidden from Allah. That is part of the subtlety of Allah regarding His slaves since they know that Allah has recording angels who record their actions and that will prevent them from acts of disobedience and the proof will be established against them when they reject and deny.]

1.9b. The Angel of Death

The angel of death seizes people's spirits by the permission of his Lord.

[Allah has delegated an angel called 'Azra'il to take the spirits of creatures, men, jinn and other birds and all animals who have a spirit. The Almighty says, "*Allah takes back all selves at the time of their death,*" (39:42) and He says, "*Then when death comes to one of you, Our messengers take him,*" (6:61) however the outward appearance differs from this. The action is ascribed to Allah because He is the one who does it in reality, and the attribution of taking the spirits is to the Angel of Death because he does it directly by the permission of Allah. Taking is ascribed to the angels who are messengers because they assist the Angel of Death in taking the spirits.]

1.10 AUTHORITIES

1.10a The Best Generation

The best generation are those who saw the Messenger of Allah, may Allah bless him and grant him peace, and believed in him. Then those who followed them and then those who followed them.

[The best generation is those who were alive in the time of the Prophet Muhammad, may Allah bless him and grant him peace, and believed in him, respected and helped and followed the Light which was sent down with him and the suns of his prophethood shone on them and they won and chose the virtue of being a Companion. Their generation is the best generation. This is in accordance with his words, "The best of you is my generation and those who follow them and then those who follow them.]

1.10b. The Best Companions

The best of the Companions (*Sahaba*) are the rightly-guided khalifs. Firstly, Abu Bakr, then 'Umar, then 'Uthman, then 'Ali, may Allah be pleased with all of them.

[Not all the Companions had the same degree, but they varied in their degrees of excellence. The Rightly-guided Khalifs are the best and in order of excellence they were Abu Bakr, then 'Umar, then 'Uthman, then 'Ali, may Allah be pleased with all of them.]

1.10c. Respect for all the Companions

None of the Companions of the Messenger should be mentioned except in the best way and silence should be maintained concerning any disagreements that broke out between them. They are the people who are most worthy of being considered in the best light possible and the people whose opinions should be most respected.

[One should avoid getting embroiled in the quarrels between them and one must always take the best interpretation in holding an opinion regarding them. They must always be thought about in the best possible light.]

1.10d. Those in Authority

Obedience to the leaders of the Muslims, both their rulers and their men of knowledge, is obligatory.

[It is obligatory to obey the Imams of the Muslims who are in authority who are responsible for attending to the best interests of the Muslims. If they command what is correct, it is obligatory to obey them, and if they forbid the reprehensible, it is obligatory to refrain from that. It is only obligatory to obey the scholars who act by their knowledge and command the correct and forbid the reprehensible and preserve the limits of Allah. The evidence for the obligation is the words of the Almighty, "*Obey Allah and obey the Messenger and those in command among you*." (4:58) The one who transgresses is not obeyed because the Prophet , may Allah bless him and grant him peace, said, "There is no obedience due to a creature which involves disobedience to the Creator." (Ibn Hanbal & al-Hakim)]

1.10e. The Salaf

It is also obligatory to follow the Right-acting Companions, to tread in their footsteps and ask forgiveness for them.

[It is obliged to follow the righteous Salaf, who are the Companions, in their words and actions, whether it is learned directly from them or is learned by derivation and *ijtihad*. Similarly one must pray for forgiveness for them.]

1.10f. Avoiding Disputation

It is also obligatory to avoid wrangling and argumentation regarding the deen ...

[It is necessary to avoid wrangling and arguments about the *deen*. Wrangling is to deny the truth after it is clear. Argumentation is to quarrel with the people of innovations. That is forbidden because it could lead to attacking the Companions and cause doubt in the heart. If the aim of the argument is to set forth the truth without obduracy, then it is permitted.]

['Adawi: Malik said, "This wrangling is not part of the deen in anything." There are certain adab which the one engaged in debate must have. He should avoid gesturing with limbs other than the tongue. He should be balanced in raising and lowering his voice. He should listen attentively to what his opponent says. Turns should be taken in speaking and not try to monopolise the debate and stubbornly refuse to alter his original claim if it is refuted. One must be careful to avoid obduracy, partisanship, laughter, obstinacy, and the like.]

1.10g. Avoiding Innovations

...and to avoid every new thing which people have introduced into it.

[Avoid innovations because the Prophet said, "If anyone innovates something in this business of ours which is not part of it, it is rejected." This is applied to innovations which did not occur in his time and which the Shari'a indicates are unlawful, according to some. Some believe that innovation is what did not occur in this time, whether the Shari'a indicates that it is unlawful, obligatory, recommended, disliked or permitted. Innovations are found in all five categories. This is what is stated by Ibn ÔAbdu's-Salam, al-Qarafi and others.]

May Allah bless and give much peace to our Master Muhammad, His Prophet, and his family and his wives and his descendants.

CHAPTER 2: WHAT NECESSITATES WUDU' AND GHUSL

[This chapter deals with those things which render it necessary to perform *wudu'* and *ghusl*.

The Arabic word *wudu'* designates the action and *wadu'* designates the water. Linguistically *wudu'* is cleaniness and excellence, and in the Shari'a it is the purification of certain parts of the body with water in order to make them clean and to remove the judgement of 'minor impurity" (*hadath*) from them in order to permit acts of worship which are forbidden by lack of purity.

As for ghusl, according to Ibn al-'Arabi there is no known dispute that *ghasl* designates the action and *ghusl* the water. There is, however, some difference of opinion in *adh-Dhakira*, where *ghusl* designates the action and *ghasl* the water. In the opinion of *adh-Dhakhira*, this is the most common position.

The obligatory nature of *Wudu'* and *Ghusl*

[Both *wudu'* and *ghusl* are obligatory by the Book, the *Sunna* and the consensus of the scholars. The Almighty says, "*O you who believe! When you you get up intending to do the prayer, wash your faces...* " (5:6) and "*Do not approach the prayer when you are drunk until you know what you are saying, nor in a state of major impurity - unless you are travelling - until you have washed yourselves completely.*" (4:43) The Messenger of Allah, may Allah bless him and grant him peace, said, "Allah does not accept the prayer of anyone in a state of impurity until he does *wudu'*." There is no disagreement between the Imams that it is obligatory.]

2.1 Wudu'

2.1a. Preconditions for wudu':

[There are certain preconditions for the validity of *wudu'*:

1. Islam
2. Adulthood
3. Sanity
4. Absence of menstrual blood or bleeding after childbirth
5. The arrival of the time of the prayer,
6. That the legally responsible person is not forgetful, asleep or insensible
7. The presence of enough pure water to perform it
8. The possibility of doing it, as opposed to somebody who is crucified, very sick, or the one who is physically prevented from it.

2.1b. What Makes *wudu'* Necessary

[Two things oblige *wudu'*: ritual impurity and certain causes. [Khalil adds a third category: apostasy and doubt.]

Ritual impurity is what breaks *wudu'* in itself, like urine, and causes are things which do not break *wudu'* in themselves but leads to ritual impurity, like loss of sanity, touching someone with desire and touching the penis. [Ibn Juzayy states that apostasy also breaks *wudu'*.]]

2.1c. The Nature of the Obligation

[*Wudu'* is a one of an obligatory nature, not merely an obligation inasmuch as it is obligatory (*fard*) on every individual, not just an obligation inasmuch as it is a confirmed *sunna* and thus strongly recommended. [The Arabic term *wajib* can refer to both fard and confirmed *sunna*.]

2.1d Urination and Defecation in a Normal Manner

[*Wudu'* must be done when something emerges from one of the two normal passages, the urethra and the anus, in a normal manner. We made the qualification "in a normal manner" to exclude anything which emerges abnormally, like pebbles and worms. They do not break *wudu'*, even if they are wettened with urine and faeces. Urine and faeces must emerge in a normal manner. So if they emerge due to an illness, like incontinence, be it urine, faeces or any other form it takes, and it afflicts him the whole time (e.g. his urine drips constantly), most of the time or half of the time, then it does not break *wudu'*. In the first case (the whole time), *wudu'* is neither obligatory or recommended. In the last two cases it is recommended unless that is difficult for him.

We also qualified 'the passages' with 'normal', and by that excluded that which emerges from a passage other than them, such as blood which comes out through venesection (blood-letting) or cupping, partially digested vomit, and impurity which emerges from a ruptured hernia in the intestines which is not due to the passages being blocked. When the two passages are blocked and the rupture is located under the intestines, then it is considered as a normal orifice.]

2.2 THINGS WHICH BREAK *WUDU'*

2.2a. Excreta Which Oblige *wudu'*

You have to do *wudu'* after urinating or defecating or passing wind.

[Wudu' is made necessary by the passing of urine from the front orifice, and faeces and wind from the rear orifice, with or without a sound. As for the wind which emerges from the penis or vagina, it is not considered as one of things which break *wudu'*.]

2.2b Other Fluids Which Necessitate *wudu'*: *Madhy*

You have to do *wudu'* when the liquid known as *madhy* comes out of the penis, in which case it is necessary to wash to the whole penis as well. *Madhy* is a thin, white liquid which comes out at times of sexual excitement when the penis is erect, either during sexual foreplay or when thinking about it.

[*Wudu'* is obliged when *madhy* emerges from the penis. It is also obligatory to wash the entire penis with an intention before doing *wudu'*. *Wudu'* is specified and using stones in not enough.]

2.2c. *Wady*

Wady is a thick white liquid which comes out usually after urinating and carries the same judgement regarding cleaning the penis as urine.

[*Wady* is dense and usually comes out after urination, although it may come out on its own or during urination. It makes *wudu'* necessary and it must be completely removed. He does this by a gentle squeezing and shaking of the penis to remove all the urine still in the uretha, and then by washing the tip of the penis.]

2.2d. Sperm (*maniyy*)

Sperm - *maniy* - is the white liquid ejaculated at orgasm during sexual intercourse which smells similar to the pollen of the date-palm.

[The emission of sperm is one of things which obliges *ghusl*, not *wudu'*. The author mentioned it here among the things which oblige *wudu'* as a digression since it does oblige *wudu'* in certain cases. It is what issues with pleasure which is not usual, although it is mentioned among the things with pleasure which is not usual (such as riding a horse or entering a hot bath). The method in which the author mentioned it

emerging (in orgasm) is. however, among the things which oblige *ghusl*. Here he mentioned the fluids which flow from the front orifice, and maniy is one of them. It is ejaculated in spurts and has a particular odour.]

2. 2e. Women's Discharge and Menstruation

The liquid which comes from a woman is a thin yellow fluid and necessitates purification, that is purification of the whole body as is the case after menstruation.

[A woman's liquid, which is her *maniy*, and the equivalent of a man's sperm, is described as being thin and yellowish. It necessitates *ghusl* when it emerges in a normal healthy manner, not due to illness or incontinence. The liquid does not have to emerge outside the body. The mere sensation of it when she is awake is enough and obliges her to purify herself, as she is obliged to do when menstruation ends. If she is asleep, them there is agreement that the liquid must emerge from the body.]

2.2f. False Menstruation

In the case of bleeding which continues beyond the normal period of menstruation (*istihada*), only *wudu'* is necessary, although in such circumstances it is recommended for a woman to repeat *wudu'* for every prayer.

[The blood of false menstruation is blood which flows outside the days of menstruation and lochia, issuing from a vein which is in the lower part of the uterus. The judgement in such a case is that wudu' is obligatory when it stops more than it comes. When it comes more than it stops or the two are equal, then she is not obliged to do wudu'.]

[Menstruation according to Khalil. The normal age of menstruation is considered from the age of adolescence to the age of 50. The individual is consulted from the age of 9 to puberty and from 50 to 70. It can be red, yellow or brown. The minimum is one gush and its maximum is fifteen days. The minimum of purity is fifteen days and it has no maximum. And the maximum length of menstruation for someone with normal periods (even if she has only had one period) is fifteen days. There are three days of using precaution (i.e. above and beyond) her normal maximum. (i.e. if she normally menstruates five days and then menstruates after that and it does not stop after the full five days, she adds three days to it. If it does not stop after that, it is false menstruation.

But if her normal period is 15 days, she does not use precaution at all.) This is as long as it does not exceed half a month. (If it is 14, she uses one, and if 13, she uses 2.) Then she is pure (to fast, prayer and have intercourse even if the blood is flowing, because it is false menstruation and not menstruation.)

The maximum length of menstruation of a pregnant woman after three months (up until five months) is half a month and five days (i.e. twenty days). When she starts the sixth month, it is twenty days and the like (i.e. ten with the twenty and so the maximum is thirty days). Is the judgement of the woman whose has a period before three months the same as the judgement of a woman whose period comes after it (after three months), or is she like the one with a regular period? There are two statements. If purity is stopped by blood before it is completely finished, even by a hour, she adds only the days of bleeding (i.e. rather than the days it stopped, and it cancels it when it is less than half a month. There must be 15 twenty-four days of continuous purity free of blood by agreement.

Then, after patches and continuous blood, it is false menstruation, not menstruation. So she does ghusl for the end of menstruation. The one who has bleeding patches does the ghusl whenever the blood stops in the patched days unless she thinks that the blood will return before the time

she is in finishes. In such a case she is not commanded to do ghusl. She fasts (if it stops at Fajr or before) and prays and has intercourse after ghusl according to the known position as opposed to the author of the *Irshad* who says that intercourse is not permitted. She can pray in all the days of menstruation when the period comes to her at night and then stops before Fajr. So she might not miss a prayer or a fast.

Blood which is distinct (from false menstrual blood by the change of smell, colour or fineness or thickness) after (the full 15 days of) purity is menstruation (and prevents prayer and the like). If it is not distinct from false menstruation in any way, it is false menstruation, even if it goes on a long time. It is like that for what is distinct before the end of purity. One does not pay attention to the distinction. If the blood is distinct from the blood of false menstruation by anything above and is judged to be menstruation and it continues until her normal time is complete and more, is changes from the quality of the blood of menstruation to that of false menstuation. So she does not use caution beyond her normal days, but does ghusl by the simple completion of her normal days according to the soundest version (from Malik and Ibn al-Majishun.)]

2.2g. Incontinence of Urine

This is also the case for incontinence (salas) of urine.

[It is recommended that someone suffering from incontinence perform *wudu'* for every prayer and for his *wudu'* to be done directly before the prayer. This judgement is not specific to incontinence of urine, but is general and applies to every form of incontinence, be it urine, wind, or *maniy*. When they emerge from the body constantly (or more than 50% of the time), they do not break *wudu'*. If, however, the one suffering from this condition is able to get medical treatment or stop his condition by marriage, then they are considered to break *wudu'*. That which emerges during the period of treatment does not break *wudu'*.]

2.2h. Loss of Consciousness: Deep Sleep

You have to do wudu' after loss of consciousness caused by either deep sleep,

[Loss of consciousness is one of the reasons which results in ritual impurity and obliges *wudu'* when one comes to again. When it departs completely, as is the case with deep sleep or fainting, and then is restored to him, *wudu'* is made obligatory. A deep sleep, long or short, breaks *wudu'* absolutely. A deep sleep is that in which the sleeper is not aware of what he or someone else does. This is opposed to a light sleep in which a person is aware of the slightest thing. This type of sleep, be it long or short, does not break *wudu'*, based on what is reported in Muslim, "The Companions of the Messenger of Allah, may Allah bless him and grant him peace, used to sleep and then pray without doing *wudu'*." Nonetheless, it is recommended to do *wudu'* after a long light sleep.]

2.2i. Fainting

or fainting,

[Malik said that someone who faints has to do *wudu'*.]

2.2j. Drunkenness

or intoxication

[The one who loses his senses through drunkenness must do *wudu'*. It makes no difference whether he becomes intoxicated by something unlawful or lawful, as when he drinks milk thinking that it is not intoxicating and it intoxicates him.]

2.2k. Insanity

or a bout of madness.

[This even more clearly breaks *wudu'* because it removes the senses. It is not in itself a reason for it. Insanity also removes consciousness, and recovery from it requires *wudu'*. It is not in itself a reason for it. *Wudu'* is obliged on account of insanity, intoxication and fainting through analogy with the ruling on sleep. Sleep removes the consciousness and awareness of an individual to a much lesser degree than these three states. No differentiation is made in terms of long or short, deep or light. The one under the influence of these states is not held to be legally responsible, whereas the one who is sleeping is.* This judgement deals with the types of madness that comes and goes. As for anyone who is terminally insane, he has no responsibility whatsoever.

*If someone misses a prayer while asleep, he must make it up, as opposed to the one who faints or is afflicted by insanity.".]

2.2l. Wudu' on Account of Touching a Person

Wudu' is also necessary when you touch someone to gain sexual pleasure or have bodily contact with them for the same reason

[One of the causes which results in ritual impurity is physical touch (*mulamasa*). According to a group of the Companions, Tabi'un, and Malik and his companions this term does not specify intercourse in the *ayat* , "*Or if you have touched women*." (4:43) 'Ali and Ibn 'Abbas, however, explain this 'touching' as referring to intercourse, and say that His words "*Or you have touched women*" means to have intercourse with them.

Specifying 'pleasure' tells us is that if the toucher intends pleasure, he must do wudu' simply by touching whether or not there is pleasure. So

that is even more so if he touches and experiences it. If he did not intend pleasure, but intended to touch to find out whether the body was hard or not, and then experiences pleasure, he must do wudu' because of the existence of pleasure, even though it did not come from intention. So the obligation of wudu' hinges on intention, even if there was no feeling while touching. If the feeling occurs after touching, then it is like pleasure arising from thinking for which nothing is obliged. If he does not intend pleasure and does not feel it, he does not have to do anything. This is the the judgement for touching.

As for anyone who is touched, if they are adult and experience pleasure, they must do wudu'. Otherwise, they do not have to do anything if they did not intend pleasure. Otherwise the judgement regarding the person who is touched is the same as the one who touches.]

2.2m. Wudu' on Account of Kissing

or for kissing them for sexual pleasure.

[It is clear from his words that kissing is general, whether on the mouth or elsewhere with the intention or arousal. That is not the case. The accepted position is that the kiss on the mouth generally breaks wudu' whether or not there is intention and arousal because it is a probable cause of pleasure unless other places give rise to pleasure. [Khalil says that if it is to bid farewell or out of mercy, as when there is some misfortune, it does not break wudu'. Looking at someone, even with pleasure, does not break wudu'.]]

2.2n. Touching the Human genitals

A man must do wudu' if he touches his penis.

[One of the things which lead to ritual impurity is touching the penis because it says in the *Muwatta*' and elsewhere that the Prophet said,

"When one of you touches his penis, he should do wudu'." The touching referred to is with the palm or the inside or sides of the fingers. He only mentioned touching one's own penis. As for the penis of someone else, it follows the judgement regarding touching with respect to intention or arousal. The penis must be connected to the body. As for that which is separate from the body, it does not break wudu' when it is touched.

When dealing with the eunuch, one considers the shape or lack it. If there is a shape, then touching it breaks wudu. If it does not have a shape, then one takes into consideration the judgement given to it. If masculinity is adjudged for him, it breaks wudu' and otherwise it does not.

There are different considerations regarding touching it through a barrier. If it is thick, that does not break wudu' in one position, If it is light, then the most accepted position is that it does break it. Touching the anus or the testicles does not break wudu' in the accepted position.]

2.2o. A Woman Touching Her Vagina

But there is difference of opinion about whether a woman has to do wudu' if she touches her vagina.

[The position of the *Mudawwana* is that it does not break wudu' based on what is on the hadith, "When one of you touches his penis, he should do wudu'." The position is based on the fact that that is what is understood by the word and when something is understood, a concealed meaning is not considered. The one who says that it does break wudu' bases it on the hadith which says, "If someone's hand touches his private parts he should do wudu'" because 'private parts' and can be applied to the penis or the vagina. Some of them say that wudu' is not broken it if she touches the outside of it, but it is broken if she presses it or puts her hand inside the labia.]

2.2p. Further Note

[Ibn Juzayy: Things that break wudu' in other schools, but not in the Maliki school are: vomiting, belching, nosebleeds or other bleeding, cupping, the emission of pus, laughing in the prayer (Abu Hanifa), eating camel meat, eating cooked food, carrying the dead person, slaughtering animals. None of these break wudu'.]

[Khalil: It is recommended to wash out the mouth after eating meat or drinking milk.]

2.3 Ghusl (Full Ablution)

2.3a. Ghusl Because of Emission of Sperm

You have to do ghusl when, as has already been mentioned, sperm (maniy) is ejaculated accompanied by sexual pleasure either during sleep or when awake whether from a man or woman.

[One of the things which oblige ghusl is the emission of sperm with normal pleasure, whether while asleep or awake, or man or woman. It is not a precondition for the obligation of ghusl that it emerge with pleasure when it actually takes place. Ghusl is obliged simply by its emerging after pleasure has departed, as when he has pleasure without intercourse and then sperm emerges from him after the pleasure is over.]

2.3b. At the end of menstruation and lochia

Ghusl is also necessary at the end of bleeding from menstruation.

[It is more precise to say 'the blood of menstruation' because it is more general than simply saying 'menstrual period' since that specifically designates that which is preceded by purity and followed by purity. The beginning or end of the blood which emerges is not called 'a menstrual

period'. In the Shari'a, the blood of menstruation is that which emerges on its own from the vagina which normally does not exceed 15 days and it emerges without being caused by illness or childbirth. Blood which emerges not by some cause, or which emerges from the anus, or emerges from a child of seven or a woman of 70, or which exceeds 15 days, or which emerges because of illness, or because of childbirth is not menstruation so that its judgements apply to it.]

2.3c. False Menstruation or Menorrhagia

Ghusl is necessary when abnormal bleeding (istihada) stops

[Then the censation of the blood of false menstruation was made a cause which obliges ghusl. Malik's final position was that ghusl was recommended. He first said that she does not have a ghusl. None of the people of the school say that it is obligatory except for al-Baji if one takes his transmission literally.]

2.3d. Lochia

Ghusl is necessary at the end of the period of bleeding which follows childbirth (nifas).

[Lochia is one of the causes which makes ghusl obligatory. Lochia (nifas) linguistically means childbirth, whether there is blood with it or not. It designates the blood itself which emerges from the vagina because of childbirth. In the usage of the people of Shari'a it designates the blood which emerges from the vagina because of childbirth in a healthy and normal way. The blood which emerges from other than the vagina is not nifas. That which emerges not on account of of childbirth is not considered nifas. That which does not emerge in a healthy manner is not nifas. That would normally be bleeding which occurs is after the period of nifas, which is 60 days.]

2.3e. Penetration of the Vagina

Ghusl must also be done if the head of the penis penetrates the vagina even if no ejaculation takes place.

[One of the things which obliges ghusl is the penetration of the penis of the adult into the vagina, even if there is no ejaculation, whether it is human or animal, or into the anus, wherther female or male, whether or not there is emission, and whether or not there is a covering over it, but that is provided that the barrier is light so that pleasure can be felt with it. As for the thick barrier, ghusl is not obliged with it unless there is ejaculation. Then there is ghusl because of ejaculation, not because of the disappearance of the penis. The basis for that is what is in the *Muwatta*' and Muslim from the words of the Prophet , "When he sits between her arms and legs and then presses her, he is obliged to do ghusl. This hadith is abrogated by what Muslim related from the words of the Prophet, "When you are too quick or there is no ejaculation, there is no ghusl,"and by what was related from his words, "Water is needed on account of water [semen]."]

2.4 LEGAL CONSEQUENCES OF VAGINAL PENETRATION

2.4a. Ghusl is Obligatory

This penetration of the vagina by the head of the penis necessitates ghusl .

2.4b. Legal Consequences in Case of Fornication

It necessitates the hadd punishment (for zina) and the payment of the dowry and gives the married couples the status of being muhsan and makes a woman who has gone through a triple divorce halal for her original husband and invalidates hajj and fasting.

[It obliges the hadd punishment for fornication and obliges the payment of the dower in full because the contract on its own demands half of the dower. It accords the married couple the states of being muhsan provided that they are free, Muslim, sane and adult.

It makes a woman lawful for her prior husband, if he is a free man. As for the woman divorced by a slave, it makes her lawful when he has divorced her twice. However making the divorced woman who has been trebly divorced lawful for her prior husband must involve full penetration. Thus full penetration is not a precondition for requiring ghusl, the hadd punishment and payment of the dowry, but full penetration and lack of barrier are preconditions for making the couple muhsan and making the divorced woman lawful.]

2.4.c. Invalidation of Hajj and Fasting

It invalidates hajj and fasting.

[It absolutely invalidates hajj, be it obligatory or voluntary, intentional or by forgetfulness, when it occurs before standing at 'Arafa or after it before the Tawaf al-Ifada and stoning the Jamra al-ÔAqaba on the Day of Sacrifice. He continues with his hajj and makes it up the following year. It invalidates fasting, even without full penetration it, be it obligatory or voluntary, intentional or by forgetfulness. He must make it up and owes kaffara for the obligatory if it is done it deliberately. Otherwise there is only making up, as is the case with doing it deliberately in a voluntary fast.]

2.5. GHUSL AND MENSTRUATION

2.5a. When Ghusl Is Done After Menstruation

A woman does ghusl immediately she sees the white liquid (qassa) which comes at the end of menstruation, or when she notices

dryness, even if she notices this after a day or two days or only an hour.

[As the blood of menstruation is mentioned as one of the causes which oblige ghusl, he goes on to clarify the sign which indicates that it has ended and that the womb is free of it. He mentioned that it has two signs: a white liquid and dryness. When the menstruating women sees one of the two signs, then her purity is clear and she is adjudged to be pure from that moment and does not wait for the second sign. There is no minimum length of menstruation. Its minimum amount is one spurt. There is no maximum amount of it, but has a maximum in time, which is fifteen days.]

[Khalil: Its maximum for someone who is having a first period is half a month (i.e. 15 days. If it stops before that and then she remains pure for half a month and then blood comes, it is a new menstruation.) as half a month is the minimum of purity (which is fifteen days and there is no limit to its maximum).

[And the maximum length of menstruation for someone with normal periods (even if she has only had one period) is fifteen days. There are three days of using precaution (i.e. above and beyond) her normal maximum. (i.e. if she normally menstruates five days and then menstruates after that and it does not stop after the full five days, she adds three days to it. If it does not stop after that, it is false menstruation. But if her normal period is 15 days, she does not use precaution at all.) This is as long as it does not exceed half a month. (If it is 14, she uses one, and if 13, she uses 2.) Then she is pure (to fast, prayer and have intercourse even if the blood is flowing, because it is false menstruation and not menstruation.)]

2.5b. Resumed Bleeding

If bleeding starts again or if she sees any yellowish discharge, she must stop doing the prayer and then when the bleeding stops again she should do ghusl and start the prayer once more.

[If she sees the sign of purity and the judgement is that she is pure immediately, from the moment she sees purity, and then the blood resumes again or there is a yellowish discharge which does not have the colour of blood, she stops praying and reckons that she is still menstruating that day and considers all of it to be the same period. It is one period since it has come before complete purity. Or it may stop before the end of her normal period or extend after its normal length and before looking for purity or before it was complete. When the bleeding comes after complete purity or when it ended after her normal peiod and the days of looking for the end, then it is not menstruation, but abnormal bleeding, When it stops again, then she again does a ghusl and prays, and does not wait to see whether more blood comes again. This question is involves the woman whose purity is interpersed with bleeding to add the days together.]

[Khalil: The one who has bleeding patches has a ghusl whenever the blood stops in the patched days unless she thinks that the blood will return before the time she is in finishes. In such a case she is not commanded to do ghusl. She fasts (if it stops at fajr or before) and prays and has intercourse after ghusl according to the known position as opposed to the author of the *Irshad* who says that intercourse is not permitted. She can pray in all the days of menstruation when the period comes to her at night and then stops before Fajr. So she might not miss a prayer or a fast.]

2.5c. Legal Consideration of Such Gaps

When this situation occurs, it is considered as one menstrual period when reckoning the period of 'idda (after divorce or being widowed) or the period of istibra (after the death of a husband).

[The intermittent blood is considered as the same period of bleeding in repsect of 'idda and istibra' and so the days of blood are added together until they reach that at which its judgement normally ends or other than. If it exceeds that it is abnormal bleeding.]

2.5d. Consideration of a Long Gap

If there is a considerable interval between the two periods of bleeding, such as eight or ten days, then the second one is considered a new menstrual period.

] If there is not a long gap between the two periods of bleeding, it is considered as one menstrual period for the purposes of 'idda and istibra', but if there is a long interval between them but less than the time of purity, which is eight or ten, even though the accepted interval is 15 days, then the second is a new menstruation, i.e. the beginning of a new one which is counted for purposes of 'idda and istibra'.]

2.5e. Abnormal Bleeding

If menstrual bleeding continues longer than fifteen days, it is considered as istihada and the woman should perform a ghusl, fast, pray and her husband can have sexual intercourse with her.

[This means if the bleeding continues for her, then she waits for fifteen days from its beginning because the maximum of menstruation in respect of her is fifteen days. Then she is judged to have abnormal bleeding whether the two periods of bleeding are distinct or not. She has

a ghusl and prays and fasts. Her husband can come to her. We mentions that which has a beginning to distinguish it from that which has no beginning because there are certain points regarding that because it is either what is normal for her varies or it does not. If it is not different and the blood continues more for her than it normally does, she looks for purity for three days as long as they do not exceed fifteen days. If it varies, she then looks for purity when it is longer than its norm.]

2.6. Lochia

2.6a. Minimum of Lochia

If the bleeding after childbirth (nifas) stops soon after the birth, a woman should do ghusl straightaway and start doing the prayer.

[If shortly after childbirth a woman sees the sign which indicates that it is ended with white discharge and dryness, then she washes and prays. "Soon after birth" has no minimum limit in relation to time and it has a minimum in relation to what emerges, which is one gush.]

2.6b. Maximum of Lochia

However, if bleeding continues longer than sixty days, then she does ghusl anyway, the bleeding is considered as istihada, and she does the prayer and fasts and her husband can have sexual intercourse with her.

[If the bleeding continues, she waits for sixty days, which it the maximum of its extent. If it stops after sixty, the matter is clear. If she continues to bleed after sixty, it is abnormal bleeding and she has a ghusl, prays and fasts and her husband can come to her.]

Chapter 3: On the Purity of Water, Clothing and the Place of Prayer and What Can Be Worn When Doing the Prayer

This chapter clarifies the condition of purity of water, the precondition of purity of clothing, the precondition of the purity of the place and what clothes are permitted in the prayer.

3.1 Purity of Water

3.1a. Obligation of Purity

When you do the prayer you are talking to your Lord. You must therefore prepare yourself for this by doing wudu' or ghusl if a ghusl is necessary.

[Purity in the Shari'a is a legal state which becomes obligatory in order to make the prayer permissible. The one who prays speaks intimately with his Lord. According to the hadith which Malik relates in the Muwatta, he must prepare for the pratyer. The text of the *Muwatta*' is that the Messenger of Allah came out to his Companions while they were praying and their voices were raised in the recitation. He said, "When you pray, you are speaking confidentially to your Lord. So look to what you confide to Him, and do not say the Qur'an outloud so that others hear it." He must prepare for that conversation by having an attentive heart and humility, and must stand with respect before Him, seeking His protection. When he lacks that, he does not speak to Him and the term "conversation" is not valid for him. Nonetheless, it is true that he prays and must adopt the means for that by being pure of minor and major impurities.]

3.1b. Pure Unchanged Water

This must be done using pure water which is uncontaminated by any impurity.

[Purification from impurities is achieved by pure water, i.e that which is not mixed with what changes any of its three qualities: colour, taste or smell, whether that change in its attributes is due to something either pure or impure. Thus if it is changed by rose water, it is not valid to use it for things like wudu' and ghusl.]

3.1c. Change in Colour of Water by Contact with Earth

You cannot use water whose colour has been changed by something mixed in with it whether that thing is pure or impure unless the change of colour has been caused by something in the earth where the water is from such as salt deposits or mud or similar things.

[It is a precondition that the water used for things like wudu' and ghusl has not been changed in its attributes by what is usually separate from it, except for earth with which it is in direct contact and to which it clings as when it lies in salty earth, sulphurous earth or fetid mud.]

3.1d. Rain Water

Any water coming from the sky or from springs or wells or the sea is all good, pure and purifies impurities.

[These waters which originate from the sky are all pure in themselves and good for any use whatsoever, whether drinking or such things or acts of worship, like wudu', ghusl and removing impurities as long as the water remains in its original state and is unchanged any anything which is is normally separate from it.]

3. 1e. Change in Colour of Water

If the colour of the water has been changed by something pure which has got into it, it remains pure but cannot be used for purification either in wudu' or ghusl or for removing impurities.

[Meaning that water whose colour has been changed with something pure, like water from pasta, is pure in itself but does not purify something else, and so it is not used for wudu' or other things like ghusl.]

3.1f. Change of Water through Impurity

Water that has been changed by something impure getting into it is not pure and cannot be used for purification purposes.

[Water which has been changed through impurity, whether in colour, taste or smell, and whether the water is little or a lot, it has substance or not, is no longer pure or purifying. It is not used either for normal things or for acts of worship.]

3.1.g A Small Amount of Impurity

A small amount of impurity makes a small amount of water impure even if there is no change in the water.

[If an impurity falls into small amount of water, like the water prepared for wudu' or ghusl, even if it is something small and the impurity does not change it, it is not permitted to use it. The most famous position is that is pure, but it is disliked to use it when other water exists, provided that it has not been altered. If it has been been changed, its purity absolutely no longer exists.]

[Ibn Juzayy states that if there is a lot of water and it is not changed, then it remains pure. There is no specific definition of "a lot" in the Maliki School.]

3.2 Amount of Water Used

3.2a. Using a Small Amount of Water

It is sunna to use a small amount of water when washing provided you do it thoroughly. Using an excessive amount is extremism and innovation.

[A small amount of water should be used as long as washing is done properly. Pouring while rubbing is recommended, i.e. an desirable aspect in the deen. Using a lot of it, pouring it while using it is excess, i.e. increase in the deen and innovation, i.e. something innovated which is contrary to the Sunna and the Path of the Salaf.]

3.2b. The Amount Used By The Prophet

The Messenger of Allah, may Allah bless him and grant him peace, did wudu' with one mudd of water which is equivalent to (1 1/3 ratls) and he did ghusl with one sa'a which is four mudds measuring by his mudd, may Allah bless him and grant him peace.

[He points out that it is established in the sunna that the Messenger of Allah did wudu' using a mudd, which is 1 1/3 ratls and he did ghusl with a sa' which is four mudds. So altogether it is 5 1/3 ratls. His aim is to inform us of the the excellence of economy and abandoning profigality and the amount which was enough for the Prophet .]

3.3 Purity of the Place and Clothing

3.3a Purity of Place

It is obligatory for the place where you are going to do the prayer to be pure.

[The purity of the place where the limbs of the one praying will touch is obligatory for the sake of the prayer, i.e. its purity for the sake of the prayer. Purity for other things, like dhikr is recommended.]

3.3b. Purity of Clothing

Your clothing must also be pure. It is said by some that the nature of the obligation referred to here is that of an absolute obligation (fard) and by others that it has the obligation of a confirmed sunna (sunna ma'akkada).

[The purity of the garment of the one praying is obligatory provided it is remembered and he has the ability to achieve that. If someone intentionally prays in an impure garment when he is able to remove it, he must always repeat that prayer. If he prays in such a state out of forgetfulness or is unable is remove it, he repeats it if it is still within the time of the prayer. The time of Dhuhr extends until the yellowing of the sky, and Maghrib and 'Isha' extend through the entire night. It is said that it is sunna to remove the impurity, and both positions are known and acceptable. Based on the position that it is sunna, it is repeated at the time absolutely, whether that was intentional, or he was able to remove it, or out of forgetfulness or ignorance.]

3.3c. Places Where it is Forbidden to Pray:

You should not do the prayer in the following places:

3.3c1. Camel Places

in places where camels congregrate,

[It is disliked to pray in places where camels are kept when they come from water, even if it is safe from impurity and even if something pure is spread out and is prayed on it because the Prophet did not say that the reason was impurity so that it would be negated if it was negated.]

3.3c2. The Middle of the Road

or in the middle of the road,

[It is disliked to pray in the middle of the road where you are unsure whether the ordure of animals and urine will get on you. If you do pray there, it is recommended that you repeat it within the time. When someone prays there because the mosque is too crowded or he spreads something pure and prays on it or he is certain that it is pure, then there is no dislike.]

3.3c3. On Top of the Ka'ba

Or on top of the Ka’ba

[It is prohibited to pray on top on the Ka'ba, based on the fact that it is necessary to face its building. The one who is above it cannot face the building. So if he prays an obligatory prayer on top of it, he must always repeat it because what is important is to face it.]

3.3c4. Public Baths

or in public baths, a place which you are not certain whether it is pure or not,

[It is disliked to pray in the baths. The reason for the dislike is the likelihood of impurity. If he is certain of its purity, then the dislike is negated and the prayer is permitted.]

3.3c5. Rubbish Dumps

or on a rubbish heap

[It is disliked to pray at a place where rubbish is thrown since one is not safe from impurity. If he is safe from impurity, then it is not disliked.]

3.3c6. Slaughterhouses

or in a slaughter house,

[It is disliked to pray in a place where animals are slaughtered if he is not safe from impurity. Otherwise, it is not disliked.]

3.3c7. Graveyards

or in the graveyards

[When the graveyard is a Muslim one, and there are no distinterred parts of the dead in the place of prayer, then it is permitted to pray there. If there are any parts of those buried in the place of prayer, then the judgement of the prayer there depends on the disagreement about and whether the human being becomes impure by death or not. If the dead person is not impure, and the person prays there deliberately, then it is disliked to pray there since there is uncertainty or certainty that there are parts of the dead person which would involve humiliation or walking on the grave. As for the prayer, it is not disliked in itself.

Ibn Habib disliked praying in the graveyards of the unbelievers because they are pits of the Fire, but if someone prays in them and is safe from impurity, his prayer is not invalid, even if he is not actually safe from praying on impurity.]

3.3c8. Non-Muslim Places of Worship

and places of worship of non-Muslims.

[This designates churches, synagogues and fire temples of the Magians. Imam Malik disliked praying in them because of impurity from their feet, i.e. that is the custom in them. The dislike is inasmuch as he prays in it by choice, not when is compelled to that. Otherwise there is no dislike. There is no difference between the ruined or inhabited place.]

3.3d. Minimum Clothing in the Prayer for a Man

The least clothing a man can do the prayer in is something which covers his '*awra* (everything between his navel and his knees) such as a long shirt or a piece of cloth he can wrap round him.

[This minimum of what does not involve sin and is adequate for what is desired of the one who prays is a garment is that which covers the private parts, be it a long shirt, cloak or trousers. A precondition for the cloak is that it is thick and not thin or transparent, i.e the private parts should not be outlined or encompassed. If it is like that, it is disliked as long as the definition is not due to wind. Otherwise not. If it is transparent, then sometimes the private parts might appear through it without thinking about and then the prayer would be invalid. Sometimes it only appears by thinking about it, and it is judgement is like the person whose is doing something disliked and the prayer is valid.]

3.3e. Uncovered Shoulders

However, it is disliked to do the prayer wearing something that does not cover the shoulders, but if this does happen the prayer need not be repeated.

[It is disliked for a man to pray in a garment which leaves his shoulders completely uncovered when something else is available. If he prays and his shoulder-blades show when he is able to cover them, he does not have to repeat the prayer either in the time or after it.]

3.4. Women's Dress and Prostration

3.4a. A Woman's Minimum Dress

The least clothing a woman can do the prayer in is a thick full-length garment covering her whole body including the top of the feet and something covering her head.

[The minimum of adequate clothing for a free adult women in the prayer consists of two things: one is a thick or ample full-length garment which does not define the figure nor is transparent. This is either *hasif*, which means thick, or *khasif*, which a full complete covering which covers the top of the feet. It also means what does not define figure nor is transparent because what he means by the minimum is that the prayer is that with which the prayer does not have to repeated in the time or outside of it.

The second item is a head-covering which covers her hair and her neck. Part of its precondition is that it is thick. In short, the fiqh is it is obliged for a woman to cover all her body in the prayer, even the soles of her feet based on the statement of Malik, "It is not permitted for a woman to show anything in the pryer except her face and palms."]

3.4b. A Woman's Prostration

A woman should touch the ground with the palms of her hands in sujud just as a man does.

[The woman touches the earth with her palms in prostration. It is mentioned here here because it might be imagined from his words about covering the top and soles of her feet that she covers her palms because each of them are part of the person who prays who is obliged to cover the entire body. Therefore this idea which is mentioned here must be eliminated.]

Chapter 4: On how to do wudu' and what is fard and sunna in it – How to clean yourself after going to the lavatory with water (*Istinja'*) or with stones and other things (*Istijmar*)

4.1 Istinja' (Cleansing with water in the lavatory)

[*Istinja'* is to wash the place of filth with water, derived from *naja*, to rescue, meaning to cut. It is as if the one who does *istinja'* removes something offensive from himself. *Istijmar* is to use small stones to remove offensive matter on the place.

4.1a. Not part of *wudu'*

Cleaning yourself with water after going to the lavatory should not be considered a part of wudu', being neither one of its sunna nor its fard aspects.

[It is neither obligatory, sunna or recommended to connect wudu' to istinja'. It is a separate form of worship which is distinct from wudu' in time and place. It is not considered one of the sunan nor one of the obligations nor one of the merits of wudu'. Its aim is to clean the place in particular. It is recommended that it precede wudu'. If he delays it, then

he must be careful about touching his penis which would break his wudu'.]

4.1b. Its Purpose

However, you have to do it in order that all impurities are removed before doing the prayer. You do not have to make a special intention before doing it.

[Istinja' is to remove impurity and so it is obligatory that it be done with water, as istijmar is done with stones so that he does not pray with impurity on the body. Part of what indicates that it is part of removing impurity is that it is enough that he remove it without intention.]

4.1c. Impurity on Clothes

The same thing applies when washing impurities off clothes.

[Cleaning impurity from clothes does not require an intention.]

4.1d. Description of Istinja'

The way you wash yourself after going to the lavatory (istinja') is first of all to wash your hand and then the end of the penis where the urine comes out. You then wipe any impurity from your anus using hard earth or other things or your left hand, which you should then wipe on the ground and wash.

[The full description of istinja' is that after he has removed anything by lightly using his fingers, he takes his penis in his left hand with his index finger and thumb and then lightly pulls it from the bottom to the glans. Then he wipes any impurity from his anus with clods or anything which can be used for istijmar. Then he washes his left hand fearing that any unpleasant smell will remain on it. Then he does istinja' with water, but

he first washes the place of urine before the place of faeces so that his hand will not be impure. Combining istijmar and istinja' with water is better since the Prophet did that.]

4.1e. Further Cleaning

After this you wash your anus by pouring water over it which you continue to do while at the same time relaxing it a little, rubbing the area thoroughly with the left hand until it is clean.

[You continue to pour water without letting up because it is more helpful in removing filth. You relax the anus a little because there are folds in it. When water touches it, it contracts. When it is relaxed, it can be washed. The place is rubbed with the hand while the water is being poured until it is cleaned of noxiousness. It is enough that he thinks it probable if he is able to do that. If he is not able to do it because his hand is cut off or short, he delegates someone who is able to touch that place, be it wife or slavegirl. He does not do wudu' when he leaves that without washing it.]

4.1f. What is Unnecessary

You do not have to wash the inside of either of the two openings.

[It is not recommended or sunna to wash inside the openings. For a man, there is only one opening, because the uretha has no opening.]

4.1g. In Case of Breaking Wind

You should not do istinja' on account having broken wind.

[It is forbidden to do this cleansing on account of wind. The basis for that is the words of the Prophet,"The one who does istinja' on account of wind is not one of us." There is no text which clarifies whether the

prohibition is one of prohibition or one of dislike. The hadith can imply either.]

4.2 ISTIJMAR (CLEANSING WITH STONES)

4.2a. Number of Stones

When doing istijmar it is sufficient to use only three stones provided that the last one comes out clean,

[Istijmar is done with three stones. When the last one comes out clear of noxiousness, then that is adequate, even if water is available. One might conclude from his words that istijmar using less than three stones is not permissible. But the well-known position is that it is based on cleanness, even if it that is achieved with only one stone.]

[Ibn Juzayy points out that it should be an odd number.]

4.2b. Water is Better

but using water is more purifying, pleasanter and preferred by the men of knowledge ('ulama').

[It is understood from his words that the stones are enough, even if water exists, out of the fear that someone might imagine that that is the same as using water and that they are equally excellent. That possibility is eliminated by his words that water is "more purifying" because neither substance nor trace remains when it is used while the stone only removes the actual thing, and water is better because it removes doubt. It is preferred by scholars, with the exception of Ibn al-Musayyab who said that using water is the action of women and implies that it is part of their obligation, i.e. specific to them and they are not allowed to use stones, as it is specifically necessary in menstruation, lochia and sperm, i.e. in respect of the one obliged to do tayammum because of illness or when

he does not have enough water for ghusl, but does have enough water to remove the impurity. Water is also specifically necessary when a lot spreads out from the orifice when it is more than is customary.]

4.3 WASHING THE HANDS BEFORE *WUDU'*

If someone has neither urinated nor defecated but is doing wudu' because he has broken it in some other way or has been asleep or done something else which makes it necessary for him to do wudu' he should wash his hands before he puts them into whatever water container he is using.

[If someone has not urinated nor defecated or anything else which would require istinja', like madhy and wadiy, and wants to do wudu' because he has broken wind or done something else which obliges wudu', like apostasy, uncertainty about impurity, becoming a Rafidite [extreme Shi'ite], and other reasons like sleep, intoxication and unconsciousness, in following the sunna, he must wash his hands first even if there is nothing on them which demands washing them as when they are both clean. Washing the hands to must absolutely be done whether he does istinja' or anything else]

4.4 SUNNAS AND OBLIGATIONS OF WUDU'

4.4a.Washing the Hands to the Wrists

The sunnas of wudu' include: washing the hands before putting them into the water container,

[One of the sunnas of wudu' is to wash the hands to the wrists before putting them in the vessel. The sunna of washing the hands before putting them into the vessel is when there is little water and it is possible that it might be used up. Otherwise it is not sunna to wash them before putting them in the vessel.]

4.4b. Rinsing the Mouth

rinsing the mouth,

[Rinsing the mouth is a sunna: it is to move water about in the mouth and spit it out. If he swallows it, it is not the sunna. Also if he opens his mouth so the water runs into it, it is not the sunna. The water must be moved about in the mouth and then spat out.]

4.4c. Sniffing Up Water

sniffing up water into the nose and blowing it out again,

[One of the sunnas is to to put water in the nostril by inhaling and if water water is put up the nose without sniffing, that is not the sunna. To blow it out, he puts his forefinger and thumb of his left on his nose and blows out the water from the nostrils using his breath.]

4.4d. Wiping the Ears

and wiping the ears. These are all sunna actions,

[It is a sunna of wudu' to wipe the outside and inside of the ears. The outside is what is next to the head and the inside is what is beside the face.]

4.5 Obligatory elements of wudu'

the rest being obligatory (fard).

[The rest of wudu' is obligatory. This sentence is unclear since the rest of wudu' includes aspects which are sunna, like repeating the wiping of the head, renewing the water for the ears, and the correct sequence, and that which is recommended, like saying the basmala at the beginning. The

answer to that is that his words, 'the rest being obligatory' means the rest of the limbs which are washed and wiped independently since it is obligatory to wipe the head, and repeating it is dependent on it. The rest of the limbs designates independent obligations. Renewing the water and the correct sequence are not limbs. They are not connected to limbs, but to other than limbs because renewal is connected to water and proper sequence is connected to washing.]

4.6 HOW TO DO *WUDU'*

4.6a. Basmala

Some of the men of knowledge ('ulama') say that when you go to do wudu' because you have been asleep or for any other reason you should begin by saying "bismillah" (in the name of Allah), whereas others say that this is not part of doing wudu' correctly.

[When you go to do wudu' for some reason which obliges it, like sleep or something else, some scholars says that one begins with the basmala. It is said that he says, "In the name of Allah, the Merciful, the Compassionate," and it is said that he simply says, "*Bismillah*." Some scholars do not think that beginning with the *basmala* was part of the known business of the Salaf, and indeed think that it is reprehensible, i.e. disliked.

It is evident from the words of the author when he ascribes each position to 'some' that Malik did not take any stand regarding the *basmala*. There are three transmissions from Malik about the *basmala*. One is that it is recommended, and that is what was stated by Ibn Habib, and is well-known because of the words of the Prophet, "There is no wudu' for the one who does not mention Allah." The hadith appears to imply the obligation, and that is what was said by Imam Ahmad and Ishaq ibn Rahawayh, who was a mujtahid. The second is that it is reprehensible, saying, "Is he slaughtering so that he needs to say the *basmala*?" The

third is that there is a choice and then the judgement is that it is permitted.]

4.6B. WHERE TO PLACE THE WATER VESSEL

It is easier to get at the water if the container is on your right hand side.

[It is recommended for the person doing wudu' to put the vessel from which he does wudu' to his right because it is easier to take water. If the vessel is open, he can scoop from it. If the opening is narrow, it is better to have it on his left because that is easier.]

4.6c. Washing the Hands Three Times

You begin by washing your hands three times before putting them into the water container,

[After putting the open vessel to the right and the narrow one to the left, to follow the sunna, he begins by washing his hands to the wrists three times before putting them into the vessel with a separate intention.]

4.6d. If You Have Gone To The Lavatory

except if you have just urinated or defecated in which case you wash off any traces of impurity before starting to do wudu'.

[What precedes is about the one who has not urinated or defecated. If he has urinated or defecated, then that person washes off the urine or faeces from himself before doing wudu'. Then he does wudu', meaning the linguistic washing of the hands. Thus his first words about washing the hands before putting them in the vessel is about the one who has not urinated or defecated. If he has urinated or defecated, then he washes the

place of urine or other filth and then does wudu', i.e, washes his hands, which is the first of the sunnas of wudu'.

4.6F. RINSING THE MOUTH

You put your hand into the container, take some water, and rinse your mouth out three times, using either one handful or three as you wish.

[You put your hand in the vessel if it is possible. Otherwise you pour the water and take enough water without being extravagant. You can rinse the mouth three times using one handful of water. The first handful is sunna and each of the remaining two is recommended. If he wishes, he rinses the mouth three times with three handfuls, and the second form is better than the first form.]

4.6g. Rubbing the Teeth

It is also good to rub your teeth with your finger.

[It is recommended to clean the teeth with the finger before doing wudu'.]

4.6h. Sniffing Water Up The Nose

You then sniff up water into your nose

[For the correct sequence only, so after he has rinsed the mouth, he sniffs water up his nose. Note that he says, "into the nose" because there might be sniffing without in going into the nose. Perhaps he mentioned that to seek the blessing of the actual words of the hadith. Muslim says, "He snuffs water up his nose."]

4.6i. Blowing Water Out The Nose

and blow it out again three times, holding your nose as you do when you blow it.

[What is accepted is that it is sunna on its own, and the description of blowing out is to put the finger and thumb of the left hand on the nose and to bring the water with the air of the nose as he does when he blows the nose. Malik disliked blowing it like a donkey because of the prohibition against that in the hadith.]

4.6j. Number of Times

It is all right if you do this rinsing and sniffing less than three times. It is also all right to do all of this with only one handful of water but three handfuls is preferable.

[Less than three is adequate for rinsing and sniffing. The minimum is achieved by one or two times. The evidence for what he mentioned is that the Prophet did wudu' doing each action once and each action twice. The person doing wudu' can also combine rinsing and sniffing in the same handful. It has two forms. One is that he only moves to sniffing after he finishes rinsing and the second is that he rinses and sniffs and then rinses and sniffs and then rinses and sniffs. The first is better because it is free of any reversal of order in worship.]

4.6k. Washing the Face: Wetting the Face

Then you take water, either with both hands together or with the right hand bringing the hands together afterwards, and using both hands pour the water unto the face.

[After finishing rinsing the mouth and sniffing, then he takes water with both hands if he wishes, or with the right hand and then puts it onto both

hands and brings the water to his face. It appears that moving the water to the face is a precondition. This is according to Ibn Habib, Ibn Majishun and Sahnun. The well-known position is that it is not a precondition to move it. What is desired is to bring water to the surface of the face however that happens, even by a water-spout.]

4.6l. Actual Washing of the Face

Then using both hands you wash the face

[He applies water to the face without splashing the face with water as women and most men do it. He washes it with the hands. This means that washing connected to moving the water to the washed limb is a precondition of the recommendation in wudu'. He also does that himself, even if he entrusts someone else to do the wudu' when that is not necessary. It does not satisfy the requirement because that is one of the actions of the arrogant. Rubbing is also obligatory, and the well-known position is that rubbing is obligatory in itself, not simply bringing the water to the face.]

4.6m. Area Covered: Top of forehead

from the top of the forehead - which is marked by the hairline -

[The sunna in washing is to begin to wash the limbs from their top. If he begins from the bottom, it is allowed, but what he has done is disliked. He explains that what is meant by forehead is what touches the earth in prostration and the right and left sides of the brow, which is next to the normal roots of the hair. One does not take into consideration thick hair or baldness. He includes the thick hair in washing but not the place of baldness. From 'hairline' it is understood that part of the head must be washed to achieve the obligation.]

4.6n. End of the chin

to the end of the chin,

[The face has both length and width. The beginning of its length is the normal roots of the hair and the end is to the end of the chin, which is point of the beard, and the hairs on the bottom lip. There is no dispute about it being included in the washing. Its width is from ear to ear.]

4.6o. Covering the Entire Face

covering the whole area of the face from the jawbones to where the ears start, making sure you include the eye sockets, any wrinkles on the forehead and the bottom of the nose.

[He must wash the entire face, rubbing around it, including the temples between the ears and the eyes. The well-known position is that it is included in washing. You run your hand over what is hidden inside the sockets and inside the eyes. That must be washed. Also the hand must pass over the wrinkles on the brow, which is the place of prostration The hand must be passed over the bottom of the nostrils. This refers to the outside out and not the inside. He must wash the outside of his lips if they are not covered while washing the face.]

4.6p. Doing It Three Times

You wash your face in this way three times taking water to it.

[The face is washed in this manner three times from the beginning of the limb to the end and rubbing it.]

4.6q. The Beard

When washing your face you rub the beard with both palms to make sure that water gets into it since hair has a natural tendency to repel water. You do not have to put your fingers through your beard when doing wudu' according to Malik. You merely rub your hands over your beard down to the end.

[When the beard is thick, when washing the face, rub the hair of the thick beard with the palms in order to make the water enter it. If he does not do this, he will not do all of the outside of the hair because the hair repels water which gets on it unless it is moved by the hands. The well-known position from Malik is that one does not have to put your fingers through the hair of a thick beard in when doing wudu'. Indeed the apparent text of the *Mudawwana* is that it is disliked in the case of a thick beard. As for the sparse beard through which the skin shows, he must put his fingers through it when doing wudu'. It is obligatory to absolutely to make water penetrate the hair of the thin or thick beard in washing. The hands must move the water to the end of the beard.]

4.6r. The Second Obligation: The Hands

You then wash your right hand and forearm three times, or twice, pouring water over it and rubbing it with the left hand, making the fingers of one hand go between the fingers of the other. Then you wash the left hand and forearm in the same way.

[Then first after finishing washing the face, which is the first obligation, he moves on to the second obligation, which is the hands. He washes the right hand first because it is recommended without dispute to begin with the right in things before the left since it is sound that the Prophet said, "When you do wudu' begin with the right." It is done three or two times. There there is a choice in the number times the hands are washed, but there is no choice in washing the face and feet. The reason for that is that

it is established that the Prophet washed his face three times and his hands twice each.

He pours water on the right hand and rubs it with the left hand. The rubbing must be connected to pouring the water. He puts the fingers of one hand between those of the other hand. He inserts them through the gaps from the top and not the bottom because otherwise that would entrail entwining which is disliked. His words can imply either obligation or recommedation, but the first is the well-known position. The basis for that is the words of the Prophet, "When you do wudu', put water between your fingers and your toes." However, the command is obligatory for the hands and recommended for the feet. Then he washes the left hand in the same manner.]

4.6s. Extent of Washing the Hands and Arms

When washing the arms you go right up to the elbow, including it in what you wash. It has also been said that you only wash up to the elbows and that it is not necessary to include them but it is better to include them in order to remain on the safe side.

[When doing wudu' you wash up to the elbows and include the elbows in the washing. It is possible to include them or not in the washing. The most famous position is that it is obligatory to include them. He clearly stated that here. This is taking the ayat ["and your hands to the elbows,"] to mean "with". Those who say that it that the washing ends at the elbows take the ayat to actually mean " up to". The third position is that it is recommended to include them in the washing to remove the difficulty of definition because it is difficult to define the end which the washing reaches.

4.6t. The Third Obligation: Wiping the Head

Then you take water with your right hand, pour it onto the left hand and using both hands you wipe over your head, beginning at the hairline at the front of the head. You place fingertips together with the thumbs at the temples then wipe over your head with both hands as far as the hairline at the back of the neck. Then you bring them back to the place you started, bringing your thumbs up behind your ears back to the temples. Whatever way you wipe your head is acceptable as long as the whole head is covered but the way mentioned is better. If you were to put both hands into the container, then lift them out wet, and wipe over your head with them this is also acceptable.

[After finishing the second obligation, he moves to the third obligation, and takes the water with the right hand and pours it onto the left palm and wipes his entire head with his hands. It is recommended to start at the front of the head or the normal hairline whether the hair is thick or he is bald. The fingers are put together except for the thumbs which are put at each of the temples. Then the head is wiped to the back of the neck, which is the bottom of the skull and then it is brought back to the place from where you started. It is recommended to bring the thumbs behind the ears and back to the temples which must be wiped along with the rest of the face including the hair. This manner of wiping is not obligatory, but the basis is to acheive a comprehensive washing and to completely wipe the head and hair.

If he put his hands in the vessel, that is another way of taking water for wiping the head. So if he brings his hands out wet after putting them in the water, whether it is in a vessel or not and then wipes his head, that is enough according to Malik without dislike and it is recommended according to Ibn al-Qasim.]

4.6u. The Ears

Then you pour water over your index fingers and thumbs or if you like you dip them into the water and with them you wipe the outside and inside of both ears.

[After wiping the head, then the ears are wiped by taking water in the right hand and pouring it over the index finger and thumb of the left hand and the adjoining part of the left palm and he pours it on the same of the right hand. Then he wipes the outside and inside of both ears. If he wishes, he can dip the index fingers and thumbs in the water and then wipe with them. The first manner comes from from Ibn al-Qasim and the second from Malik.]

4.6v. Women's Action in Wiping

Women wipe their heads and ears in the same way but they have to wipe over any hair that is hanging loose and cannot wipe over any head covering.

[The woman wipes her head and ears like the man in amount and description by the words of the Almighty, "Wipe your heads," and women are the sisters of men. She wipes over any hair hanging loose. What is well-known is the obligation to wipe over any of man's hair which is handing on the two sides since it will fall on the place of the obligation or on the face. As for that which actually extends over the place of the obligation, it is agreed that it is obligatory to wipe it.

The 'head covering' is a cloth by which a woman binds her hair to protect it from the dust. She also does not wipe over other similar hair coverings when they are put next to the head because all of that is a barrier since it does not let her wipe what must be wiped. Otherwise it is permitted as Malik said that the Prophet wiped over his turban, which is by necessity. Imam Ahmad disagreed and said that there is choice in

that. It is affimed that the Prophet wiped the forelock at the front of the head first and finished by wiping over the turban.]

Wiping Under Plaits

They should put their hands under their plaits when bringing their hands back to the front.

[After the woman begins the wiping from the front of her head and reaches the back where the hair hangs down, she must put her hands under the plaits of hair to complete it, and it is sunna to bring the hands back if there is any moisture left on them. It is clear from his words that she does not have to undo her plaits because of the difficulty involved. Some people limit that to what is tied with a thread or two. When there are a lot of threads, it must be undone.]

4.6w. Fourth Obligation: The Feet

[After he finishes wiping the ears, he begins the fourth obligation, i.e. washing the feet. It is said that its obligation is wiping. The reason for the disagreement as to do with how the words of the Almighty are read and whether "your feet" is in the genitive or accusative. If it is accusative, then the feet are added to "face and hands" and there is no doubt that its obligation is washing, and so this judgement is given by the conjunction. If it is genitive, then it is joined to "head" and it has the judgement of what it is joined to, which is wiping, and so they are wiped. They are wiped if he is wearing leather socks. This is deduced from what the Prophet did since it is confirmed that he only wiped his feet when he was wearing leather socks. The multiple transmissions from him is that he always washed them when he was not wearing leather socks.

4.6x The Manner of Washing the Feet

You then wash both feet pouring water onto your right foot with your right hand and rubbing it with your left hand little by little. You do this thoroughly three times.

[The description of washing the feet is that water is poured with the right hand onto the right foot which is rubbed with the left hand. Rubbing one foot with the other is not enough. This is the position of Ibn al-Qasim.

Its washing is recommended to be completed by water and rubbing three times and should not be more than that. The washing of the feet is limited to three times, which is one of two well-known positions about whether the fourth is disliked or forbidden. The other statement is that washing the feet has no limitation. What is desired is to cleanse, even that is more than three. It is also well-known.]

4.6y The Toes and Heels

If you want you can put your fingers between your toes. If you do not do this it does not matter, but doing it makes you feel more satisfied. You then rub your heels and ankles and any part which water does not get to easily due to hardening or cracking of the skin. You should make sure you do this well, pouring water on the area with your hand because there is a hadith which says, "Woe to the heels from the Fire." The "heel" of a thing is its extremity or end. You then do the same thing with the left foot.

[If he wishes, he puts water between his toes while washing them, and if he wishes, he leaves that, but it is better to put them between the toes and no doubt remains when it is done.

Rubbing the heels can mean either the obligation or recommendation. What is meant is the first. He must rub all those places where the water does not immediately reach due to hardness or cracks as well as wrinkles in loose skin. The threat regarding "Woe to the heels from the Fire" does not only apply to heels, but to every part of the limbs of wudu'. The Prophet said that about when he saw that the heels had no water on them and had not been wiped with water. The whole process is repeated with the left foot. He did not state the limit of washing, and it extends to the ankles. The best known position is to include them in the washing.]

4.6z Three Times

Washing each of the limbs three times is not an actual command. You can do it less but three is the most you should do. If you can do it thoroughly with less than that it is acceptable as long as you do not leave anything out. Not everyone is the same in the amount of water they require to do wudu' thoroughly.

[There is no actual definition that it is not adequate if the limbs are not washed in wudu' three times each. Three is the limit of what can be done, and no more than three. Ibn Bashir transmits the consensus that the fourth time is forbidden. The story of the consensus of its prohibition is not established because of the existence of the statement that it is disliked. However prohibition can include what is disliked. The basis in this is that it is related that a bedouin asked the Messenger of Allah about wudu' and he showed him three times each. It is clear that he did wudu' in his presence and then said, "This is how wudu' is." Therefore anyone who does more than this has acted badly, transgressed and done wrong. If it is done throroughly with less than that, it is allowed. The maximum is specified, but not the mininum since it is contained in one and two and so its state is known and there is no need to define it.

Not all people are the same in doing that washing thoroughly. If someone does not do it thoroughly with one time, then it is not allowed

and specified in respect of him that which will achieve it. If that is only complete with two, then he intends the obligation by them, and the third is excellence. If it is only thorough with three, then the obligation is intended by it and the recommendation removes what is more. It is clear that the description of wudu' contains obligations, sunnas and virtues and the person is encouraged to peform them in the manner by which none of them is lacking.]

4.7 THE REWARD FOR PERFORMING *WUDU'*

The Messenger of Allah, may Allah bless him and grant him peace, said, "Anyone who does wudu' and does it well and then raises his eyes to the sky and says, 'I bear witness that there is no god but Allah alone, without any partner and I bear witness that Muhammad is His slave and Messenger,' will have the eight gates of the Garden opened for him and he can enter by any of them he chooses."

47a. What to say afterwards

Some of the 'ulama' recommend saying when you finish wudu', "O Allah, make me one of those who turn back to You and make me one of those who purify themselves."

ALLAHUMMA IJA'ALNI MINA'T-TAWWABIN WA'JA'ALNI MINA'L-MUTATAHHIRIN)

[Ibn Habib says that it is recommended to say this. The *'tawwabin'* are those who have committed wrong actions and then repented and purified themselves of the wrong actions.]

4.8 PURPOSE OF *WUDU'*

4.8a. Aim

You must do wudu' realising that you are doing it for Allah as He has ordered you to do, hoping that it will be accepted and that you will get the reward for it and that it will purify you of your wrong actions.

[Scholars say that the shaykh did not speak about the intention (*niyya*) for wudu' because he did not say that he makes the intention to perform wudu' which is an obligation by agreement with Ibn Rushd because he did not recall any disagreement about its being obligatory for wudu'. That is why the agreement is related about its being obligatory and in the soundest position with Ibn al-Hajib. Opposite it there is a text on wudu' from Malik about it not being obligatory. Then they disagree about whether it can be deduced from his words or not. Some say that he does not speak about intention in the *Risala* at all and some of that say that it is deduced from his words "he must", meaning the person doing wudu' must be doing wudu' sincerely for Allah, not for showing off or reputation. That is because sincerity is commanded in the words of the Almighty, "They were only commanded to worship Allah making the deen sincerely His." Sincerity is that a person intend the Worshipped by the act of worship without actual articulation. The focus of the intention is the heart. Part of its precondition is that it accompany the first obligation in wudu', which is washing the face. If it precedes it by a lot, then it is agreed that it is not permissible. There are two accepted positions about it preceding by a little. The best known is that it is allowed. They agreed that if he makes the intention after washing the face, then it is not adequate. The basis for the intention is that it accompany it. If it happens that he overlooks it, he is forgiven.

When wudu' is done sincerely with the intention of obeying Allah's command and secure in himself that the action is done freely, he should

hope that it will be accepted and he will be purified of wrong actions absed on what is in Muslim where the Prophet said, "When a Muslim (or a believer) does wudu' and washes his face, then every wrong action at which his eye looked leaves from his face with the water - or with the last drop of waterÉ"

4.8b. Wudu' As Preparation

You should feel in yourself that it is a preparation and a cleansing for speaking to your Lord and standing in front of Him to carry out the acts He has made obligatory on you with humility in your bowing and prostration.

[He should know that wudu' is a preparation and a cleansing from wrong actions and dirt. When the legally responsible person wants to perform wudu', he does it sincerely for Allah Almighty desiring that Allah will accept it because he is purifying himself and this is in order to prepare to converse with his Lord. Conversing with the Lord demands sincerity of heart and devotion of inner consciousness to His remembrance. It is also in order to perform the obligation Allah has imposed on him. Bowing and prostration are specifically mentioned as well as humility in other actions because total humility is meant and because the closest a slave is to his Lord is when he is in prostration.]

4.8c. Having Certainty

You should do wudu' with a certainty of this, taking good care to do it properly for no action is complete without the right intention behind it.

[You should be aware that wudu' is preparation for intimate conversation with your Lord to order to make reverence and esteem firm in your heart. That will result in doing wudu' with due humility to your Master. This reverence and esteem will result in doing wudu' in a

manner which is mindful of avoiding imperfections and whisperings. Actions are only according to intentions. It is enough that the Prophet said, "Every man has what he intends."]

CHAPTER 5: GHUSL

Evidence for it and its preconditions were already mentioned in the chapter on wudu'. The description of ghusl contains obligations, sunnas and meritorious elements. The author did not clarify which are the obligations and so we will make that clear. There are five obligations:

1. Covering the entire body with water
2. the intention
3. lack of interruption
4. Rubbing
5. making water penetrate the hair, whether it is thick or there are thick plaits.

There are five sunnas of ghusl:

1. washing the hands to the wrists first:
2. rinsing the mouth;
3. sniffing water up the nose;
4. blowing water out the nose;
5. and wiping the earholes. He wipes whatever he can wash of them. The description of the washing is to take water in the hands and tilting his head so the water can reach the inside of his ears. He does not pour water into his ears because that would entail harm.

Its meritorious parts are seven:

1. the basmala;
2. beginning by removing filth from the body;
3. washing all the limbs of wudu' before the bath;

4. beginning with the upper body before the lower;
5. beginning with the right side before the left;
6. doing the head three times; and
7. using a small amount of water while doing ghusl completely.

There are five disliked things:

1. reversing the order of the actions;
2. pouring a lot of water;
3. repeating the washing after having done it fully;
4. doing ghusl in the lavatory or in a filthy place; and
5. to purify oneself while showing the private parts.

Ghusl is washing which covers the entire surface of the body accompanied with rubbing because the reality of ghusl consists of both.

5.1. THINGS WHICH MAKE GHUSL OBLIGATORY

5.1a. Janaba

You must do ghusl because of janaba

[Janaba results from two things: ejaculation and the disappearance of the end of the penis in the vagina.]

5.1b. End of Menstruation or Lochia

or at the end of menstruation and the bleeding after childbirth.

[At the cessation of the bleeding of both states, in both attribute and judgement. Some of them say that it is attribute rather than judgement which was already discussed. You are aware of the similarity in the attribute, but not in the judgement. The attribute is not specific to the obligation.]

5.2 GHUSL WITH OR WITHOUT *WUDU'*

5.2a. Ghusl without wudu'

If, when doing ghusl, you do not include wudu' it is acceptable

[If the person who is purifying himself orherself from janaba, menstruation and lochia confines himself to ghusl without wudu', the ghusl satisfies wudu' and so he can pray with that ghusl without doing wudu' if he has not touched his penis since the minor impurity is included in the major impurity. This is when ghusl is obligatory, like the ghusl for janaba. As for the ghusl which is sunna or recommended, it goes not satisfy wudu'.

5.2B.WHAT TO DO FIRST

but it is better to do wudu', having begun by washing off any impurity from the private parts or the rest of the body.

[It is better for the one who is purifying himself from janaba and the like to perform two meritorious actions, one of which is to begin by washing the private parts or any filth on his body. If he washes it with the intention of janaba and removes the filth, that is enough for him in the well-known position. He does not have to repeat his ghusl a second time. If he washes with the intention of removing the impurity and then does not wash it afterwards, it is not enough by agreement. The second meritorious action is wudu' before washing his body to honour the limbs of wudu'.]

5.2c. Doing *wudu'* first

After this you do wudu' as you would for the prayer.

[Based on his previous statement that it is better for him to do wudu', which linguistically is washing the hands to the wrists. So he completes the wudu' which he would do for the prayer. This would necessitate that he washes off any filth on the body or private parts before washing his hands. That is not the case since washing the hands is put first. So it is better to say that he speaks first about the judgement, and secondly about the actual description.

Another matter remains. It is whether he repeats washing the hands a second time after washing his penis without the intention of janaba or not. The hadith of Maymuna demands that after the filth is removed, the hands are not washed again. That is the definite position of some people, but most of the commentators of Khalil say that he washes them again.]

5.2d. The question of the feet

If you want to, you can include your feet, or if you want, you can leave them to the end.

[His words show that he can choose between washing his feet before washing his body or delay that. Some of them therefore say that he can choose between washing his feet before or later. The well-known statement is that he washes his feet before absolutely whether the place where he washing is clean of filth or not. The evidence for the accepted position is in the *Muwatta*' that "whenever the Messenger of Allah performed ghusl for janaba, he would begin by washing his hands, and then did wudu' as for the prayer. "So it is clear that he did a full wudu', which is the school of Malik and ash-Shafi'i. Al-Fakhani said that it is the well-known position. It is said that he can absolutely delay washing them whether the place is clean or not. The position about delaying them is more evident than the well-known position based on what is in the two *Sahih* collections that the Prophet used to delay washing his feet to the end of his washing and then he would wash them.]

5.3. DESCRIPTION OF WUDU'

5.3a. Putting the hands in the vessel

Then you immerse your hands completely in the water container, take them out without holding any water in them, and rub the roots of your hair with your fingertips.

[After he has finished wudu', he puts his hands in the vessel if it is open. If it is closed, he pours the water on them. He takes them out uncupped without any actual water other than the traces of the water and he rubs the roots of the head, beginning from the back of the skull. There are two benefits in rubbing in *fiqh*: the speed of making water reach the skin, and medicinal, which is that it prepares the head for the water so that it will not be harmed when the water is poured on it afterwards since the pores of the skin will be closed.]

5.3b.Three handfuls of water

You then take out three handfuls of water washing your head throughly with each one.

[After finishing rubbing the roots of head, water is scooped on the head three times while rubbing his head with them. The entire head must be covered with each of the three handfuls and there must not be less than three, even if it is all covered with one and does his separate parts with it. If three is not enough, he does more until it is covered.]

5.3c. Women's hair

Women do the same as this. They gather up their hair and do not have to undo their plaits.

[The woman washes filth off and does wudu' first and wets the roots of the hair as a man does. She gathers up and holds her hair and it is neither obligatory or recommended in the ghusl for janaba or menstruation for her to undo her plaits. The evidence for what he said is in Muslim where Umm Salama said, "Messenger of Allah, I am a woman who keeps her hair closely plaited. Do I have to undo it for ghusl after sexual defilement?" He replied, "It is enough for you to throw three handfuls over your head and then pour the water over yourself. Then you will be purified." It is an argument for the one who says that rubbing is not a precondition because the pouring washes away. As the woman is not obliged to undo her plaits, she is not obliged to remove her ring, even if it is tight, or her bracelets, nor is it obligatory for a man to remove a permissible ring, even if it is tight.

5.3D. POURING WATER ON RIGHT SIDE

You then pour water over your right side, then over the left, rubbing the body with both hands immediately the water has been poured so that the whole body is covered.

[After washing his head, he begins to wash his body by washing the entire right side beginning from the top and then does the same with the left side. It is obligatory to rub it in the well-known position. From what he says it appears that he does not rub after pouring water on the right side until water is poured on the left side. When water is poured on the left side, he rubs both sides. Something similar is stated in *Tahqiq al-Mabani*. It is clear that he rubs the right side before pouring on the left side. That is how you find it elsewhere. He rubs with both hands if that is possible. It is not possible, he delegates someone else to do to do the rubbing. The area between the navel and knees can only be rubbed by someone who can touch that directly - a wife or slavegirl. If he does not find anyone to do that, it is enough to pour the water over his body without rubbing. If he delegates someone when it is not necessary, that is

not allowed in the well-known position. The rubbing should be done after the water has been poured, and that is evident.]

5.3e. Covering the entire body

If you have any doubt about water reaching any part of your body you pour water over it again,

[The water must cover all the body to discharge the responsibility and it is only satisfied when he is certain. If there is any doubt about whether or not the water has reached the limbs of person performing the bathing, then he is obliged to pour water over himself again, and it is not enough to wash it with water still on his body.]

5.3f. Rubbing

rubbing with your hand until you are certain every part of your body has been covered.

[There must be rubbing or whatever takes its place if that is impossible. It is like that when he is unsure about whether or not he has rubbed a place on his body. He takes water again and rubs it until he is certain of that. It is enough that he thinks it probable, differing from those who say that it is not enough. If it is enough to make the water reach the skin, which is agreed upon, it is better to carry out the rubbing which is disputed. He must repeat until he is sure that his entire body has been covered.]

5.3g. Inaccessible areas

You must make sure that you include the inside of the navel, under your chin, that you put your fingers right through your beard, that you rub under your armpits, between your buttocks and thighs,

behind your knees, not forgetting the heels and the soles of your feet. You also make sure you rub between each finger.

[The water and rubbing must include all these areas, the throat and that which is under the beard, putting the fingers through the hair of the beard. The hair of the head is not mentioned because it was already dealt with, and other hair must be washed as well, like the eyebrows, eyelashes, moustache, armpits and pubic region. Inside the navel must be washed, which a place where dirt gathers, between the buttocks which must be relaxed so that water reaches the folds of the anus, but not inside the anus. Also inside the thighs, which is between the anus and penis, behind the knees, and the soles of the feet. It is obligatory to put water between the fingers which would have been covered a prior wudu'. Otherwise it is done in ghusl. He does not mention things which are far from water, like the lines of the brow and hollows of the outside eyelids and under the nostrils and other places since that was covered in wudu'.]

5.3h.The feet

If you have delayed washing your feet, you wash them last, thereby completing both your ghusl and your wudu'.

[If they were not washed first, then they are washed, completing the obligatory ghusl and recommended wudu'. If he delayed washing the feet in wudu', he washes them with the intention of wudu' and ghusl.]

5.4. AVOIDING TOUCHING THE PENIS:

5.4a. After the ghusl

You should be careful not to touch your penis with the inside of your hand when rubbing your body but if you do, having already completed your ghusl, you have to do wudu' again.

[When he does wudu' on account of janaba after washing the uncleanness from his private parts with the intention of removing janaba, he should be careful about touching the penis. It is mentioned because it is the most common of several things which break wudu'. Wudu' is only obliged by touching the penis with the inside of the hand. It appears from this that wudu' is not obliged for touching the penis unless it is done with the inside of the hand. That is the position of Imam Ashhab. The school of Ibn al-Qasim is that wudu' is obliged for touching the penis with the inside of the hand or the fingers. In the *Mukhtasar* of Shaykh Khalil, he adds "or by the sides of the fingers". If you touch the penis deliberately or forgetfully and you have finished wudu', then wudu' must be repeated if you want to pray. Otherwise it is not necessary to repeat it until you wish to pray. as is the case with other ritual impurities. It is necessary to have an intention to repeat wudu' if he wants to pray, because his major impurity has been removed and so some say that the intention for wudu' must be renewed which is agreed upon.]

5.4b. Touching the penis before ghusl is completed

But if you touch it at the beginning of your ghusl, after having washed the areas included in wudu', you should then go over them again with water in the right order and with the intention of doing wudu'.

[All or part, as is transmitted from Abu 'Imran. It makes no difference whether he washes them first and then touches or whether he has washed some of them. Following the correct order is recommended. We consider that the correct sequence in wudu' is sunna. It is evident that he means that it is not obligatory in the sunna. It is said that it is referring to the obligations of wudu', its sunnas and its meritorious actions. It is said that it refers to making water flow on the limbs and rubbing. On this basis and on the basis of what is before it it must mean that it is obligatory.

There is disagreement about the renewing the intention of wudu'. The author says that it is obliged to renew the intention of wudu'. If he intends to remove the major impurity, that is not enough. He is in the position of someone doing wudu' who is not in janaba who intends to remove major impurity. Al-Qabisi says that he is not obliged to renew it. The basis of the disagreement is whether each limb which is purifies first or its own is purified without the full completion. If we said the first, then it is obliged to renew it because its purity has gone with the ritual impurity and so it is obliged to make an intention to wash it again. If we state the second, then it is not obliged to renew it because it remains and so we include it in the intention for the greater purity.

Chapter 6: Tayammum and Its Description

6.1 When it is done

[If you cannot find water, then you must do tayyamum, which is recommended. Linguistically *tayammum* means aiming for something. The Almighty says, "Do not have recourse to bad things," (2:267) i.e. aim for them. In the Shari'a it is a legal act of worship by which the prayer becomes allowed. This means that the Shari'a has judged it. This exists in wudu' and ghusl. By it the prayer is permitted when wudu' and ghusl are excluded because tayammum is only to make lawful. Wudu' and ghusl are done in order to remove impurity. It is obligatory by the Book, Sunna and consensus. The Almighty says, "If you cannot find any water, then do tayammum with pure earth," (4:43) and in Muslim the Prophet said, "We were preferred over people by three things: our rows were made like the rows of the angels, the entire earth was made a mosque for us and its earth is purification if we do not find water." The consensus is that tayammum is obligatory when water is lacking or the ability to use it lacking it. There are preconditions for the obligation: Islam, adulthood, sanity, absence of the blood of menstruation or lochia, the arrival of the time, lack of water or lack of ability to use it, and that there is no barrier over the limbs and nothing which precludes it.]

6.1a. On a journey

If you are on a journey and you cannot find water, you have to do tayammum, provided that you do not expect to find any water before the time for the prayer has finished.

[The situation is that either that there is no water to be found at all or a judgement that he will not find enough water for wudu' or ghusl in a journey (or while resident), whether short or not, whether the traveller is

healthy or not, and whether the journey is permissible or not, because the allowance for doing it on a journey or while resident does not have the precondition that the journey be for something permissible. If the allowance is only in the journey, like breaking the fast in Ramadan, then the journey must be permissible and it must be a distance of at least four postal stages, like that for shortening the prayer.

Thus the mere absence of water is only a reason for the obligation of tayammum when he despairs of finding water or he thinks it probable that there is no water. It is not the case if he is unsure or hopes for water or is certain of finding water within the time.

What is meant by the obligation is the widest period of obligation. The one who has despaired is someone who has searched for it in a manner which is not arduous for someone like him. He is only obliged to seek if he hopes to find it or suspects its presence. If he is certain that he does not exist, then he does not look for it in the time. By 'time', the preferred time is meant.]

6.1b. Lack of ability

You also have to do tayammum even when there is water, whether on a journey or staying in one place, if you are unable to touch water on account of illness or are disabled by illness to such an extent that although you could use it, you are unable to get to it and cannot find anyone else to bring it to you.

[This is when there is water and you are unable to use it, on a journey or at home, because of illness which prevents using it since you fear that using it will cause death, loss of use of a faculty or limb, increased illness, delayed recovery, or will actually cause a illness. If he does not fear any of that, but is only pained by it, he must continue to do wudu' or ghusl. So tayammum is obliged for someone who is healthy when water exists because he cannot use it because illness would occur, or for a sick

person who is able to use it, but does not find anyone to bring it to him, even for a payment equal to the price which the seller would oblige or it or he does not find a vessel or he only finds a forbidden vessel or cannot pay for using it.]

6.1c. Danger

The same applies to someone travelling who is near water but prevented from reaching it because of the fear of thieves or wild animals.

[This is also true about the traveller who is near water but cannot reach it out of fear of thieves as he must preserve his property and the property of others. The property must be more than what he would have to pay to buy water. It must be ascertained that they exist or he thinks that it is probable that they exist. Uncertainty is not taken into consideration. The same applies if he fears for himself from wild animals when he is certain about that or thinks that it is probable.]

6.1d. Certainty about reaching water

If a traveller feels certain that he will get to water within the time of the prayer, he avoids doing tayammum until the end of the time.

[Whether he is in a journey where he shortens the prayer or not and he is certain that he will find enough water for wudu' or ghusl, it is recommended that that he delay tayammum. The upshot of the fiqh in the matter is that one of the preconditions of the obligation of tayammum is the arrival of the time. The judgement in it varies according to the state of the person doing tayammum because either he is certain that water will exist in the time or he will reach it or he despairs of finding it or reaching it, or he is unsure about finding it or reaching it in time or hopes to find it or reach it in time. The author clarifies these circumstances and indicates it when he says, "If a traveller

feels certain." In fact, it is not particular to the traveller, but applies to all who are permitted to do tayammum due to the absence of water. When he is certain that water exists or that he will reach it within the time or thinks that it is probable that it exists or that he will reach it in time, then it is recommended to delay tayammum to the end of the time.]

6.1e. Certainty about not reaching water

If he feels certain he will not get to water he should do tayammum at the beginning of the time.

[This is about the absence of water or the failure to reach it in time after seeking for it. If there is what obliges seeking, then it is recommended that he do tayammum at the beginning of the time to obtain the excellence of the time because the excellence of water is despaired of. That is how it is judged by the one who thinks it probable that it will not exist within the time or will not be found in it.]

6.1f. Uncertainty about reaching water

If he does not know whether he will get to water or not, he should do tayammum in the middle of the time. This also applies to someone who is afraid that he will not be able to get to water but nevertheless hopes that he will.

[If he is unsure about finding it, it is recommended to do it in the middle of the time. It is affirmed by Shaykh Ahmad Zarruq that what is meant is uncertainty about reaching it. He said that there is no difference between it and what before it according to the Maliki School. Although it is sound from the aspect of the judgement, the author's words imply a difference when based on what is meant by the one who hopes. He said that the words of the author contain something different from the position of the School. That is because his literal words say that the one who hopes does not delay, but does tayammum in the middle of the time.

It is not as he said. His judgement is that of the one who is certain and the one who is certain delays to the end of the time. Ibn Harun said, "I do not know of anyone who transmitted that the one who hopes does tayammum in the middle of the time except Ibn Abi Zayd. Ibn Naji said that it is possible that it refutes his words. According to the words of Ibn Naji by "fears" the author means 'suspects".]

6.2 FINDING WATER AFTER DOING TAYAMMUM

If, under any of these circumstances, you do tayammum and do the prayer and then come across water within the time of the prayer the following judgements apply.

[These seven who can do taymmum are: the sick person who cannot touch water, the sick person who cannot find anyone to bring him water, the traveller who is near water but is prevented from reaching it by fear of thieves or animals, the traveller who is certain that water will exist within the time, the one who despairs of finding it within the time, the one who has no knowledge, and the fearful one who hopes to find it. This is what happens if such a person (except for the sick person who cannot use water then find water or the sick person who can, but does not find anyone to bring him the water) finds water. Finding water means having the ability to use it, its existence, or the existence of a vessel to bring it.]

6.2.a A sick person

A sick person who could not find anybody to bring water to him should do the prayer again.

[It is recommended that he does the prayer again within the time. The rule for the sick person who does not find anyone to bring him water or any vessel with which to bring the water is to delay tayammum to the middle of the time. If he does the necessary tayammum in the middle of

the time and prays and then before the end of the time of the prayer then that which stops him from using the water is removed, as when he finds what will enable him to obtain it, then it is recommended for him to repeat the prayer within the time if he is restricted in that people do not come in to him often. If people come in to him often, then he has no restriction, then he does not have to repeat it.]

6.2b. A Fearful person

This also applies to someone who was afraid of wild animals or other dangers of that sort, and to a traveller who was afraid he would not get to water but hoped that he would. If you have done tayammum for any other reason, you should not repeat the prayer.

[The one who fears for himself from wild animals or for his property from thieves is like the sick person who does not find anyone to bring him water in the time. It is recommended that he repeat the prayer when he gets water within the time. The result is that when the person who is afraid of animals does tayammum in the middle if the time, it is recommended that he repeat it in the time with four provisos. That is that he is certain that water exists or that he will find it were it not for his fear. His fear must be definite or likely and he ascertains the absence of what he fears and the existence of water itself. If he is not certain that it exists or that he will reach it, or what he fears is clear, or none of it is certain and someone else finds it, he does not repeat if. If his fear is a simple doubt, then he always repeats it.]

6.2c. A traveller

and to a traveller who was afraid he would not get to water but hoped that he would.

[When he finds water within the time, it is recommended that he repeat the prayer he has prayed in the time allotted for it, which is the middle.

Part of the subject is that it is better if it is advanced. What is meant by 'fear' in the words of the author is uncertainty about reaching it. It is recommended for the one who prayed in the time allotted to it to repeat it within the time. That is even more the case if he has advanced it. As for the one who is unsure about whether it exists, if he does it before the middle of the time allotted for it, then he repeats it. If he prayed in the middle of the time allotted for it, he does not have to repeat it. The difference between them is that the one who is unsure about reaching it, has a sort of falling short and so he is asked to repeat it. As for the one who is unsure about whether it exists, he relies on the basis, which is its non-existence.]

6.2d. Other reasons

If you have done tayammum for any other reason than these three, you should not repeat the prayer.

[It appears from his words that the one who despairs does not repeat the prayer when he finds water absolutely. It is not like that, and it must be explained. If he finds the water which he despaired of, he repeats it. If he finds other water, he does not repeat it. It also seems from his words that someone who finds water in his bag or saddle or forgets it is there and then remembers it, does not have to repeat it. The one who acts deliberately in the three cases has to repeat it, which differs from the literal words of the author.]

6.3 FREQUENCY

6.3a. Number of fard prayers with one tayammum

You should not pray two fard prayers with one tayammum except if you are ill and cannot touch water because of some harm to your body which will last at least until the time of the next prayer.

[None of those seven categories should pray two obligatory or sunna prayers at home or on a journey. whether they share in the time or not, with the same tayyamum except for the person with a constant illness which will continue to the time of the second prayer. It may happen that he does not do the first prayer in its time, either intentionally or by forgetfulness or ignorance. In that case he can pray them both together with one tayammum. This is a general judgement for prayers at home and on a journey.]

6.3b. For each prayer

Although there are some who say that even in this situation you should do tayammum again for each prayer.

[For each obligatory prayer, whether he is healthy or ill, travelling or at home.]

6.3c. A number of missed prayers

It has been related from Malik that someone who remembers not having done a number of prayers can do them with one tayammum.

[This is a number of fard prayers which he missed by forgetfulness or by sleeping through them or deliberately not praying them and then repenting and wanting to make them up: he can pray them with one tayammum, whether healthy or ill, travelling or at home.

The first statement is by Ibn Sha'ban and the second is by Ibn al-Qasim and is the famous one. This is why it was rejected by the shaykh when he was ill at midday when someone else suggested it to him. According to the well-known position, if he disagrees and prays two prayers with one tayammum, whether they are shared or not, he does not ever have to make up the second.

According to his words at the beginning of the chapter about the time, one does tayammum for the obligatory prayer absolutely, even for Jumu'a. That is not the case, since the healthy person who is resident does not do tayammum for Jumu'a since it is a substitute for Dhuhr. He prays Dhuhr with tayammum, even at the beginning of the time. If he prays Jumu'a with tayammum, that is not acceptable. The sick person and the traveller can do tayammum for it. It That is also the case with the funeral prayer. The healthy resident does not do tayammum for it unless it becomes a specific obligation for him since no one else is found who can pray it nor is it possible to delay it until he can obtain water.]

6.3d. Voluntary prayers

[As for the sunnas and the voluntary prayers, the traveller but not the heathy resident person does tayammum for them, i.e the one who is obliged to do tayammum because of lack of water. The judgement of the healthy resident for whom tayammum is obliged out of fear of illness is like that of the sick person and he does tayammum for Jumu'a and the funeral, even if it is not a specific obligation, and for the sunna and voluntary prayers. If he intends an obligatory prayer by his tayammum, he is permitted to pray the voluntary prayer with it afterwards with the precondition that it is connected to the obligation, even if he did not intend the voluntary prayer after the obligatory. It is limited to prayers which are after the obligatory, although if he prays a voluntary prayer before it, it is valid by his statement, 'provided that it is connected to the obligatory.'

If there is a long separation or he leaves the mosque, he must repeat his taymmum if he wants to pray the voluntary prayers. A short separation is overlooked. That is defined as about the length it takes to recite *Ayat al-Kursi*. It is also a precondition that he does not do more than the voluntary. What is "more" is defined by custom.

6.3e. What can be used for tayammum

Tayammum is done using pure surface earth, that is any substance on the earth's surface such as soil, sand, stones, or salt deposits.

["Pure" is how the people of firm knowledge and those who know fiqh explain "tayyib" where Allah says,"do tayammum with clean earth," Tayyib means pure earth in Arabic and that is what Malik said. Malik said that *sa'id* means what is on the surface of the earth in accordance with Arab usage. Others believe that the *sa'id* in the ayat designates pure earth found on the surface of the earth or brought out from inside of it. This includes salt desposits, and secretions. Tayammum is not done deliberately on wood, plants and grass and groups. The literal meaning of his words is that tayammum can be done on stones, even hard ones, if there is no soil as long as it has not been baked. It is not permitted to do tayammum on lime nor baked bricks, which are red bricks. Tayammum can be done on soil, whether it has been moved or not, although it is better when it is not moved by agreement. The first is based on the well-known position.

One does not do tayammum on other things than earth. Things like salt, alum, sulphur, copper and iron are not used for tayammum except in their original place or moved from one place to another. But it is cannot be in a form which is firm in people's hands, like medicines. As for what can be held in people's hands like medicines, it is not valid to use them for tayammum.]

6.4 HOW TO DO IT

6.4a. Beginning tayammum

To do tayammum you hit both hands on the ground - if anything clings to them it should be lightly shaken off -

[This clariifies how tayammum is done. He strikes both hands on the ground. If he is missing a hand, he does tayammun with the other. If he is unable to do it, someone does it for him. If he cannot delgate someone, he rubs his face in the dust. What is meant by 'striking' is not actual striking. What is meant is to place his hands on the surface used for tayammum, soil or whatever. This 'striking' is an obligation. It is not a precondition that anything clings to his hands. If something clings to them, he shakes them lightly so that some people consider this shaking as one of the meritorious parts of tayammum so that it does not harm his face.]

6.4b. The Intention

[Before beginning, the one doing tayammum must intend earth and nothing else with which tayammum is not valid. He must intend to make the prayer lawful or intend the obligation of tayammum in the first striking. If he is in minor impurity, he intends to make the prayer permissible from the lesser impurity. If he is in greater impurity, he intends to make the prayer lawful from the greater impurity. If he does not call the major impurity to mind and thus omits the intention regarding the greater impurity intentionally or by forgetfulness, and prays with that tayammum, then he must always repeat the prayer. If he intends the greater impurity, believing that he has it and then the opposite is clear, then it allows the lesser. When he intends the obligations of tayammum, it is enough for him, even if the intention of the greater does not occur to him, If he intends to remove the impurity, it is enough enough for him in the well-known position. Tayammum does not remove lesser impurity. It only makes the prayer permissible.]

6.4c. Wiping the face

then using both of them you wipe over your whole face.

[After shaking his hands, then he wipes his face and does not omit any of it. He does not miss the cartilage of the upper ear and other things. If he leaves any of the wiping of all of the face, even a little, then it is not allowed. He begins from the top, as in wudu' and runs his hands over the length of it to his beard. He passes over the lines of the face, because the basis of wiping is doing it lightly.]

6.4d. Striking the ground a second time

Then you hit both hands on the ground again

[The second blow is for wiping the hands by way of sunna. It is not said how the obligation is done in a sunna manner because we say after the obligation that the second comes after the first so if he fails to strike the earth the second time and then wipes his face and hands with the first, it is adequate.]

6.4e. Wiping the hands

and then wipe your right hand and arm with your left hand. To do this you put the fingers of your left hand on the tips of the fingers of your right. Then you slide your fingers down the back of your right hand and arm, as far as the elbow, folding your fingers round it as you do so. thoroughly.

[The recommended manner of wiping is to first wipe the right with the left, putting the fingers on the right on the left except for the thumbs. The palm is passed over the top of the hand and arm to the elbow. It appears from the words of the author that the elbow is not wiped because it is the end. It is said that he meant including the elbows as is done with wudu' since tayammum replaces it.

Wiping to the elbows is sunna, and to the wrists is obligatory according to what is in *al-Mukhtasar*. Al-Bisami adds to it by saying that the well-

known position of the school is that wiping is to the elbows is obligatory. The dispute is when it is confined to the wrists and he prays. The well-known position is that he repeats the prayer if still within the time. An opposite position is that he must always repeat it. This consequence is rejected. *Al-Muqaddamat (*Ibn Rushd) prefers that which is followed in *al-Mukhtasar,* and Qadi 'Iyad summarised it in his *Qawa'id*, and it is preferred.

The well-position of the school is that the fingers go between each other, and that is by the flat sides of the fingers, not the sides because they have not touched earth. The well-known position is also that a ring is removed and moving it from its place can be done instead of actually removing it. The difference between tayammum and wudu' is said to lie in the fact that the ring is removed in tayammum but not in wudu' because of the force of the water flowing in wudu' which is not the case with earth.

6.4f. Wiping the inside of the right hand

Then you put your palm on the inside of your arm and, gripping your arm, slide your hand from your elbow just back as far as your wrist

[After wiping the outside of the right hand, using the palm, because the fingers because the fingers were already use on the outside of the hand except for the thumb.]

6.4g. The Thumb

and then run the inside of the left thumb over the outside of your right thumb.

[This is because it was not wiped before. What he mentioned about wiping the thumbs was also mentioned by Ibn at-Talla' who is Muhammad ibn Farah, the shaykh of the fuqaha' in his time. The literal

of the transmission, which is relied upon, it wiping the outside of the right thumb with the outside of the fingers. Al-Fakhani said, "I do not know of anyone of the people of language who transmit that the thumb is the largest "finger"].

6.4h. The Left hand

You then wipe over the left hand and arm in the same way and after reaching the wrist you wipe your right palm with the left down to the tips of the fingers.

[After finishing the right, then do the left to the wrist. The tips of the fingers designates the inside of the palm and fingers. Observe how he is silent about the left palm unless he says that each of them wipes and is wiped. This is the description which the shaykh mentioned and it was also mentioned by Shaykh Khalid. He begins with the outside of the right hand with the left and moves to the left before completing the right. This was transmitted by Ibn Habib from Malik. Ibn al-Qasim said, "He only moves to the left after finishing the right." Al-Lakhmi and 'Abdu'l-Haqq preferred that. The position of Ibn al-Qasim is preferred. The basis of the preference is that moving to the second before completing the first misses out the excellence of proper order between right and left. Some of the shaykhs recommend the transmission of Ibn Habib so that he does not wipe the dust on the palm, but the one with the reliable position says that the remaining of the dust is not sought aso that its judgement should be observed.]

6.4i. Other methods of wiping

If you wipe the right with the left or the left with the right in some other way that you find easy, that is acceptable as long as it is done fully.

[If you differ from the recommended manner, your tayammum is still allowed. It only differs from the best manner. One can deduce from his words, "done fully" that if he does not wipe his forearms, it is not allowed because the arms are mentioned in wiping. The well-known position is that if he confines hismelf to the wrists and then prays, then he repeats it within the time.]

6.5 JUDGEMENTS ABOUT SOMEONE IN A MAJOR STATE OF IMPURITY

6.5a. Tayammum for janaba or end of menstruation

If someone is in a state of janaba, or has been menstruating, and cannot find any water to do ghusl with, they should do tayammum and do the prayer and then when they find water they should do ghusl.

[Even if someone like this finds enough water for wudu', they still do tayammum following the previous information regarding the possibility of finding water which is not repeated here. Tayammum is obliged when there is no water. He mentions it here to refute those who say that someone in a state of janaba and or a woman who has been menstruating do not do tayammum.]

6.5b. Not repeating prayers done with tayammum

They do not have to repeat any prayers they have done.

[Because their prayer occurs in manner which is commanded. The literal import of his words is that that is the case in the time or after it. It is explained that it is repeated within the time in the instances which were already mentioned. Its literal meaning is that is the case or not whether there is impurity on their bodies. It is the text of the *Mudawwana* and it restricted by there not being any impurity on the body. If there is

impurity in his body and he prays with it by forgetfulness and they remember after they have finished, then they repeat it within the time. The statement of the author about not repeating it is informing about when water is found after they have prayed with tayammum. If there is water before the prayer, and there is enough time for ghusl and the prayer, even a rak'at, within the time, then tayyamum is invalid. If they find it after the time has begun and before it finished, even if the time is ample, or the time has begun, but there is not enough time for a ghusl and still catching a rak'at, they pray with tayammum.]

6.6 FURTHER JUDGEMENTS ABOUT *TAYAMMUM*

6.6a. Taymmum does not make intercourse permissible

A man cannot have sexual intercourse with his wife if she has just finished menstruating or the bleeding after childbirth if she has only purified herself by tayammum until there is enough water for her to do ghusl first and both of them to do ghusl afterwards.

[This is whether she is a Muslim or a kitabi or a slave girl. According to the well-known position, it is forbidden for him to have intercourse with her. This does not only imply to actual intercourse, but enjoying her between the navel and knee, even through a barrier, is unlawful. Finding water can either be his responsibility or the responsibility of both.]

6.6b. Water for ghusl after intercourse

[There must be enough water for ghusl on account of bleeding and then for ghusl on account of janaba. This explains the words at the end of the book about not approaching a woman bleeding from menstruation or lochia because the literal meaning is would be that when the bleeding stops, he is permitted to have intercourse, and so here he explains that even if menstruation has stopped, intercourse is not permitted, even with tayammum. Intercourse is forbidden in the well-known position beause

tayammum does not remove impurity. It only makes the prayer permitted. The words of author show that tayammum is called 'purification,' and that is indeed the case since the Prophet said, "Its earth is pure." It is also called wudu' by since the Prophet said, "Tayammum is the wudu' of the Muslim.]

6.6c. Avoiding janaba if there is no water

[It is also deduced from this that he if he does not find water, he should not voluntarily bring about a state of janaba in himself. That is the position of Malik in *al-Mudawwan*a, i.e. that it is disliked. if he does tayammum for the lesser impurity, he should not bring about janaba in himself so that he has to do tayammum for the greater impurity. This does not negate what was already stated about the unlawfulness in the statement of the author about having intercourse, because the unlawfulness comes from his going to have intercourse with her when she has purified herself from menstruation by tayammum. This is is when he does not fear any harm to his body or fear fornication. If he is physically harmed by the length of time or fears fornication, then he has intercourse and does tayammum.

Other matters relating to tayammum will be mentioned in the general chapter on the prayer.

Chapter 7: On Wiping Over Leather Socks

This chapter is about the judgement regarding wiping over leather socks, the lack of a defined period of time in for doing that, what invalidates it, some of its preconditions, its description and what makes wiping forbidden.

7.1. Its Judgement

You can wipe over leather socks

[It is an allowance to wipe which is understood from the context or from wiping because there must be a wiper, man or women.

It is permitted to wipe over leather socks. It is a dispensation, but washing is better than it. The permission applies to what is understood by leather socks. They resemble galouches, which are thick socks with no legs, and they resemble socks which have the form of leather socks, but are made from cotton and covered with leather. The basis for its legality is that the Prophet did it.]

7.1a. Location

either when travelling or otherwise permitted,

[Wiping over socks is an allowance and so it is not particular to the traveller and it is permitted to do at home and on a journey. In the well-known position, it is not a precondition for the wiping that the journey be for something permissible.]

7.1b. As long as the socks have not been removed

provided you have not taken them off.

[Wiping over socks is not limited by a known period of time. It is related from Malik that its maximun length when someone is resident is a day and a night, and three days in a journey. This allowance continues, and it is permitted to wipe over them without limit within that period until he removes them. If he removes them, it is agreed that it is invalid to wipe over them and he should hasten to wash his feet again.

If he delays washing them deliberately for as long as it takes the limbs of wudu' to dry, he does wudu'. He is like the one who is unable and the one who forgets and builds on his wudu', whether it is long or not. If he removes one sock he must remove the other as well, and wash both feet. It is not permitted to wipe over one of them while washing the other.

7.1c. Preconditions of Wiping

[Wiping has ten preconditions, five of which concern what is wiped and five which concern the person who wipes.

The preconditions in what is wiped are:

1. That they are made of leather and are not things like cotton socks
2. They are pure and not impure, like the skin of carrion, even if it is tanned
3. They are not polluted and pierced except something like glue;
4. They must cover the place of the obligation (to the ankles) without missing any of it
5. and he must be able to walk in them without them being overly loose-fitting or narrow. Otherwise, it is not permitted to wipe over them.

The preconditions of the wiper are:

1. That he is not a rebelling against Allah by wearing them, and so the man in ihram does not wipe over the socks or affluent by wearing them. This is when the affluent person wears them to avoid the bother of washing the feet or other things which have the sense of indulgent affluence. Such a person is not permitted to wipe over them and must always repeat it. If he ears to them to protect himself from heat or cold or to imitate the Prophet, then he can wipe over them.
2. He must put them on while pure. The one who puts them on does not wipe over impurity, even they are washed.
3. The one who puts them on in state of purity by tayammum cannot wipe.
4. He must fully wash the limbs of wudu' before putting them on.
5. He does not just wash his feet and put them on then finish doing wudu', or wash one foot and then put it on before washing the other. If he removes them at the beginning and then puts them on after full purity or removes the one he is wearing and then and puts it on after washing the second, then he can wipe. The meaning is that the prayer is permitted by it to when he is afraid of going wudu' on account of the cold.]

7.1d. When the socks were put on

This is if you put them on after you have washed them as part of wudu' for doing the prayer. It is in this situation that, if you then break wudu', you are entitled to wipe over your leather socks when doing wudu'.

[This contains some of the preconditions which permit wiping. His words, "after you have washed them" means that they were put on while in a state of purity which is achieved by water. His words, "for doing the prayer" means that it is complete in the senses and meaning. So the one who puts on the socks after wudu' and having fulfilled all the

preconditions is allowed to wipe when he breaks wudu' by lesser impurity. It is limited to lesser impurity because major impurity invalidates wiping because it obliges that they be washed.]

7.1e. When it is not permitted

In any other case it is not permitted.

[If it is not like that since he was not pure when he put them or or he had purified himself with earth or put them on before his purification with water was complete,then it is not permitted.]

7.2. DESCRIPTION

7.2a. Right Foot and removing impurity

The way you do the wiping is to put your right hand on the top of your foot beginning at the toes and your left hand underneath. Then you pass your hands over your foot as far as the ankle.

[This is the recommended manner of wiping. The ankles are included in the wiping as in wudu' because that is indicated. It is disliked to follow the creases in it because the basis for wiping is lightening. It is disliked to repeat the wiping or to wash it. If he does that, it is still allowable. It is recommended for him to wipe when he is going to pray to wash them with the intention of wudu' only or to add the intention of removing mud or impurity, even it if is overlooked. If he washes with the intention of removing the mud or impurity, or he does not intend anything, it is not enough.]

7.2b. Left foot

You do the same thing with the left foot except that you put the left hand on top and the right hand underneath.

[The hands are reversed here. Ibn Shiblun said that the left is like the right according to the literal meaning of the *Mudawwana*. What is mentioned about wiping on the top and bottom of the leather socks at the same time is agreed upon. The disagreement is about the amount which must be wiped. Ashhab believes that if he confines himself to wiping the top or bottom of the socks to the upper or the lower, it is enough and he does not repeat his prayer. Ibn Nafi' believed that it is not adequate.

But the well-known position is that it is obligatory to wipe the top and recommended to wipe the bottom. If he confines himself to wiping the upper and prays, it is recommended that he repeat it in the preferred time. It is recommended that he repeat wudu' and the prayer when he abandons wiping the bottom out of ignorance, intentionally or inability if it has been a long time. If it has not been a long time, he wipes the bottom only. It is like that if he only wipes the bottom out of oversight, if it has been a long time or not. If he omits wiping on the bottom, he always repeats it, intentionally or by ignorance or forgetfulness. He builds on the intention absolutely if he forgets and if he is unable, if it is not long. Some of the shaykhs believe that the sides of the feet are part of the top.]

7.2c. Mud

If there is any mud or dung or your leather socks you cannot wipe over them until you have wiped or washed it off.

[The dung refers to that of mules, horses and asses. Impure dung must be wiped. It is best to wash off pure mud or dung. 'Abdu'l-Wahhab said that that is because wiping is done over the socks and this constitutes a barrier over the socks, and so it is obliged to remove it. Al-Fakihi sees it as strong recommendation rather than obligation because if he fails to wipe the bottom of the socks altogether, he does not have to repeat it either in the time or otherwise according to the position of Ibn al-Qasim.

According to the position of Ashhab, he only has to repeat it within the time, not any time else.]

7.2d. Another form of wiping

Some people say you should start at the ankles and wipe to the tip of the toes so that any dust on the socks which might get wet does not end up at the ankle end of your socks.

[This is another description of wiping over the socks, i.e. putting the right on the right and the left on the left, and beginning at the ankles to avoid moving the dust on the top of the socks in particular because moving impurity from one place to another must happen in any case, whether he begins from the heels or the toes, i.e. impurity is moved to the top of the sock more than it is moved to the bottom, since if he were not to wipe the tops, the wiping would be invalid, which is not the case with the bottoms. His words must be examined. When he is asked to wipe the mud and wash the impure dung before wiping, how can it be understood that it is moving an impurity from one place to another, top or otherwise, whether he begins to wipe from the heals or the toes?]

7.2e. Actual mud

But if there is any actual mud on the bottom of your socks you should not wipe over it until it has been removed in any case.

[i.e. it is obliged to remove it according to the position that it is obligatory to wipe the bottom and recommended according to the other statement.]

CHAPTER 8: ON THE TIMES OF THE PRAYERS AND THEIR NAMES

[This chapter deals with the recognition of the times of prayer. It is an individual obligaiton for every legally responsible person to know their times if he can do that. If he cannot do that, as when someone is blind, he follows someone else. The "time" designates the amount of time allotted for an act of worship in the Shari'a. It is either the time of performing it or the time of making it up. The time of performing is either the optional (*ikhtiyari*) time, meaning the time in which a legally responsible person can choose when to perform the prayer at any part of it, or it imperative (*daruri*) time.

The optional can be either the time of excellence or the time of leeway. As regards the prayer, what is meant by it in the usage of the people of the Shari'a it a body of rak'ats and prostrations, which are transmitted from the supplication (which is the linguistic meaning) since it contains the *Fatiha* which contains the supplication, which is "Guide usÉ" other suras than the *Fatiha*, and it is that whose obligation is known from the Deen as necessity. The one who denies it is an apostate and is asked to repent. If he repents, he is alright. Otherwise he is killed. It is like that with the one who denies the rest of the pillars of Islam which are: the shahada, zakat, fasting and hajj.]

Its preconditions

There are five preconditions for its being obligatory: are:

1. Islam,
2. Adulthood
3. Sanity
4. Lack of bleeding from menstruation and lochia, and
5. The arrival of the time of the prayer.

['Iyad adds hearing the call to prayer.]

It is one of the greatest acts of worship because it was prescribed in Heaven during the Night Journey. That was in Makka a year before the Hijra as opposed to the rest of the laws. They were prescribed on earth. There is disagreement about how it was obliged. 'A'isha said that they were prescribed as two rak'ats at home and in the journey and then it was confirmed in the journey and increased to four when someone is resident. It is said that four rak'ats were obliged except for Maghrib, which was three and Subh, which was two. Then in the journey they were shortened to two rak'ats. As for knowing the names of the prayers, that is also obligatory because it is by their names that there is distinction and specification because if the prayer is not specified, then the prayer is invalid.]

8.1. Subh

8.1a. Its name

According to the people of Madina the middle prayer is the early morning prayer, namely the dawn prayer.

[It is evident that a multiplicity names is indicative of the honour of the named. There are four names given to this prayer: as-Subh, al-Wusta (the middle), al-Fajr and al-Ghada. Subh is derived from *sabah*, which is whiteness since it becomes obligatory at this time. Fajr is derived from *infijar* (bursting forth) since it is obliged when dawn breaks from the darkness of the night.]

8.1b. The Beginning of its time

The beginning of the time for this prayer is when dawn breaks and the light spreads out in the extreme east, going from the qibla to behind the qibla, [1] until it rises up and fills the whole horizon.

[The beginning of its ikhtiyari time is when dawn breaks and the light of dawn which comes from the light of the sun spreads out. It is It sometimes rises from the extreme east and sometimes elsewhere and follows it. The place of its breaking is the place where the sun rises. This excludes the false dawn which is the whiteness like the tail of a wolf, which thins and does not spread. It has no jurisdiction.

The light of dawn continues until it fills up the entire horizon. Ibn 'Umar thought this was unclear and said that the author said that the light is in the extreme east and so it is clear that it rises in the extreme east. "Going from the qibla to behind the qibla" means that it rises from the qibla. It might give rise to the idea that the qibla has a behind, but it is not like that. Al-Ujhuri replies that the qibla and the east are the same. It is what is opposite the west. "Behind" means the middle. When the qibla is hidden from him, he faces the east and puts the west behind him. Then he is facing it because his deviation from the qibla is slight.

[1. This must necessarily refer to North Africa, where the author lived. The commentators are not sure of the exact meaning of this phrase.]

8.1c. The end of the time

The end of the time is when the light has got very bright so that someone ending the prayer says the salam just as the edge of the sun appears over the horizon.

[The end of the time of Subh. This is derived from that fact the end of the ikhtiyari time for Subh is sunrise, and it is the well-known position of Malik. Ibn 'Abdu'l-Barr said that it is that on which the people act. 'Iyad attributes it to all the scholars and Imams of fatwa. On that basis there is no daruri time for Subh. In the *Mudawwana*, which is approved, and on whose basis the author of the *Mukhtasar* proceeds, the ikhtiyari time is from the rising of true dawn until the upper brightening, and the end is when the upper brightening leaves and it is that time in which

faces can be seen in a place without a roof or covering by someone with average sight. Then the daruri time of Subh is from the beginning of the upper brightening to the first part of sunrise.]

8.1d. Its scope

Any time between these two points is acceptable but the beginning of the time is the best.

[It is established that the time of the Subh prayer is the breaking of dawn and the end ot the time is the clear brightening. The prayer can occur in any of that time if he is not excessive because the beginning and end of time subject to choice are equal unless it is negated by a constriction. However if he thinks that he will die before he does it if he does not occupy himself with it, then there is agreement that he rebels by leaving it because the wide time then becomes constricted in respect of him, i.e. whoever thinks that he will die during the time must pray early in that time. If he does not pray in that time in which he must pray, he sins whether he dies or not. In this respect, other impediments to prayer which occur are the same as death, like menstruation. If a woman delays and the impediment occurs, she does not make it because the lack of making up does not negate the wrong action.

Then it is affirmed that the ikhtiyari time is all the same unless it is negated by a constriction, but you should know that they vary in excellence. The early part is absolutely better, whether in summer or winter, individually or in a group. It is like that according to Malik and most of the schools in order to obtain the virtue of the time. The basis in this is that it is sound that the Prophet used to pray Subh when it was still dark as did the Rashidun khalifs.]

8.2 DHUHR

8.2a The time of dhuhr

The time of dhuhr is from when the sun has passed the zenith, and that is when the shadows start to get longer.

[The beginning of the time where there is choice is when the sun begins to decline and has passed the zenith. Then the shadows begin to increase as the sun moves. It is known was "*zawal*": that comes from the fact that when a stick it set upright, it is that point between the increase and decrease of the shadow. and so it not simply the shadow cast, but has to do with its increase.]

8.2b. Delaying Dhuhr

It is recommended to delay the prayer in summer until the shadow of an object reaches a quarter of the length of that object added to the length of its shadow at noon.

[Al-Fakhani says that it is delayed in the summer rather than the winter, in a group or individually. Ibn Naji said, "His words 'in the summer' are not understoof. It can be like that in the winter." Delay is recommended until the time mentioned about the shadow. The shadow is not measured from its root, but from the shadow after noon. However that is an unusual linguistic usage. The well-known usage is that the shadow (*dhill*) is until midday comes and the shadow is after it is called *fay*'.]

8.2c. In Mosques

It is also said that this practice is only recommended as far as mosques are concerned so that more people can catch the prayer, and that it is better for a man praying by himself to do the prayer at the beginning of the time.

[This delaying is said to be only about mosque, so that people can join in the prayer. As for someone on his own, it is better to pray at the beginning of the time because there is no benefit in delaying it.]

8.2d. In intense heat

It is also said that it is better to delay the prayer until it is a little cooler when the heat is fierce even if you are praying by yourself since the Prophet, may Allah bless him and grant him peace, said, "Delay the prayer until it gets a little cooler because the fierceness of the heat is from the flames of Jahannam."

[This is when the intensity of heat abates. So there are three positions about waiting for the cooling in the case of Dhuhr. Either it is absolutely recommended to delay it for individual and the group, or the recommendation is confined to mosque for the group, and the third is to make a distinction between strong heat and other times, and so it is recommended in the case of intense heat for both the group and the individual.

The expression in the *Muwatta*' is that the Messenger of Allah said, "When the heat is fierce, then delay the prayer until it gets cooler, for scorching heat is from the blast of Jahannam." It means to wait for some shade and to the intensity of the heat to abate. The hadith about hastening the prayer is abrogated by this hadith. It is that the Messenger of Allah prayed Dhuhr at midday at the time of intense heat.]

8.2e. The end of the time

The end of the time of Dhuhr is when the shadow of an object is the same length as that object in addition to the length of its shadow at noon.

[This is the end of the ikhtiyari time for Dhuhr. The consideration of day here is from sunrise to sunset, as opposed to the day in fasting which begins when dawn breaks.]

8.3. 'Asr

8.3a. The beginning of 'Asr and end of Dhuhr

The beginning of the time of 'Asr is the end of the time of Dhuhr

[The beginning of the ikhtiyari time of 'Asr is the end of the ikhtiyari time of Dhuhr. On this basis, they share in the same time for the amount of four rak'ats or 'Asr shares with Dhuhr at the end of its time for the amount of four rak'ats. According to the first, if Dhuhr is delayed until the time of 'Asr begins and Dhuhr is done at the beginning of the time, he incurs no wrong action. According to this, if someone prays 'Asr at the end of the first length, it is invalid. According to the second, if he prays 'Asr while there still remains the time for four rak'ats of the time of Dhur at the beginning of the second length, he commits a wrong action since he does it before the time of the other has ended.]

8.3b. The end of the time of 'Asr

Its end is when the shadow of an object is twice the length of that object in addition to the length of its shadow at noon.

[This is the end of the ikhtiyari time of 'Asr.]

8.3c. Another view

It is also said that if, standing upright facing the sun with your eyes looking straight ahead, you can see the sun, then the time of 'Asr has arrived. If you cannot see the sun the time has not yet begun. If the sun has descended right into your field of vision you are well into the

time. According to Malik, may Allah have mercy on him, the time for 'Asr lasts until the sun begins to turn yellow.

[Another view of the beginning of the time: this is with the head slightly bowed but not properly bowed (proper bowing is when the eyes are facing the ground.) Then if the sun comes into your line of sight, it is 'Asr. Some people deny that the author said this since its speaker is not known. The reply to him is that the arrival of the time is not known because this not apply at all times because the sun is high in the summer and low in the winter.

In defining the end of the ikhtiyari time of 'Asr from the transmission of Ibn al-Qasim, it is when the sun begins to turn yellow in the earth. The position of the school is that it is better to perform 'Asr in the beginning of the time.]

8.4. MAGHRIB

8.4a. The Time of Maghrib

The time of Maghrib - also known as the prayer of the one who is resident, meaning that a traveller does not shorten it but prays it in the same way as someone who is resident - is at sunset.

[This is the ikhtiyari time. The Maghrib prayer has two names. This is because it occurs at sunset, and the other name is ash-Shahid, meaning resident. This is because the traveller prays it the same as the resident. Al-Fakhani said that its reason that Maghrib is called Shahid is because the traveller does not shorten it as is the case with Subh. 'Abdu'l-Wahhab reported that it is heard but it is not analogous because Subh is not so-named.]

8.4b. Its Time

When the sun has completely disappeared below the horizon, the prayer is due and it should not be delayed. This moment is the time for this prayer and it should not be delayed beyond it.

[What is observed in that is the disappearance of its body and circular orb, not its traces and its rays. Ibn Bashir said that this applies to a location where there are no mountains. When there are mountains, he looks towards the east and when darkness appears, that is an indication of its setting. When it disappears and sets, i.e. we can no longer see it because of the intervening barrier between us and it, then its time has begun and the prayer is not delayed. Maghrib only has one ikhtiyari time. When it is delayed, it moves into its daruri time. The well-known position is that it is not extensive. Indeed the amount required for doing it after the preconditions of its time exist is narrow. It is permitted for the one who obtains its preconditions of purity, sutra, facing qibla, the adhan and iqama, to to delay doing it for the necessary time required to achieve its preconditions. It is also said that its time extends to to the disappearance of the red twilight. Al-Baji and many of the people of the School prefer it because of what is in the *Muwatta'* where he says, "When the redness has gone, then the 'Isha' prayer is due and you have left the time of Maghrib," and what is in Muslim of the words of the Prophet, "The time of Maghrib lasts as long as the red twilight has not gone."]

8.5. 'ISHA'

8.5a. Its Name

[The ikktiyari time for 'Atama or 'Isha', and Isha' is the recommended name for it because it was used in the Noble Book. A group of scholars, including Imam Malik, dislike calling it 'Atama . As for what is related in the *Muwatta'*, the Musnad of Ahmad and the two *Sahih* collections

from the hadith of Abu Hurayra, "If they had known what is in 'Atama and Subh, they would have come to them, even crawling" where it is called 'Atama, that clarifies that it is permitted and not unlawful to call it that, and there is no contradiction with ithe fact that it is disliked.]

8.5b. The Time of 'Isha'

The time of the prayer of darkness or 'isha', the latter being the better name for it, is when the redness remaining in the sky from the remaining rays of the sun. When all yellowness and redness has gone, the time of 'isha' has arrived. No attention need be paid to any whiteness which may remain on the western horizon.

[The time of 'Isha' is when the redness in the direction of the sunset has disappeared, not the entire west, as the author states. Note that he mentioned yellowness first, even though it is later than redness. However, in Arabic the *waw* (and) does not demand sequence.

The comment about the whiteness is in reference to the statement of Abu Hanifa that the "*shafq*" (twilight) is the whiteness. Our evidence is what ad-Daraqutni related that the Prophet said, "The twilight is the redness. When the twilight departs, then the prayer is obligatory." This is the beginning of the ikhtiyari time.

8.5c. The End of its Time

The time for 'Isha' extends from this time until a third of the night has passed for those who want to delay doing it because of working or some other good reason.

[It ends with the first third according to the well-known position. Ibn Habib said that it extends to the middle of the night. It can be delayed for someone with an excuse, like work, and it should only be delayed from its early time by those with excuses. Other people, even if they are

alone, should hasten to perform the 'Isha' prayer at the beginning of it its time. This is recommended.]

8.5d. Delaying in the mosques

It is better to do it as early as possible although there is no harm in delaying it a little in mosques to allow time for people to gather.

["There is no harm" means it is recommended to delay the prayer in the mosques to allow people to gather. The author's premise is weak, and it is preferred that it is always advanced to the beginning of the time.]

8.5e. After the Prayer

Sleeping before doing 'Isha' is disliked and so is talking after it unless there is a good reason for it.

[Ibn 'Umar said, "It is disliked to talk after it more than it is disliked to sleep before it because the person might miss the virtues of the prayer of Subh in group or miss its time or miss rising for *tahajjud* and *dhikru'llah* in the night. An exception to that is discussing knowledge and acts of nearness to Allah. Exceptions to are is also the bridegroom, the guest and the traveller, i.e. someone who has arrived from a journey or is going on a journey, and whatever need demands like talking connected to someone's best interests, like buying and selling.]

8.6. Daruri Times

[The Shaykh spoke about the ikhtiyari time and not the daruri time. Subh was already mentioned. The daruri time of Dhuhr begins at the beginning of the second length and that of 'Asr begins with the yellowing and ends at sunset, although 'Asr is particular to four rak'ats before sunset. This time is daruri for it in particular so that if you pray Dhuhr in that time, it is making it up. It begins in Maghrib is when it can

be finishing without negligence, i.e. follows finishing it. it. That of 'Isha' begins with second third of the night and ends when the dawn rises. The last of it is the amount of four rak'ats,as there is between Dhuhr and 'Asr.

These times are called daruri tmes because it is not permitted to delay the prayer until them except for the people of necessity (darura), and the people of necessity are menstruating women, a woman with bleeding on account of childbirth, the unbeliever, the apostate, the child, the mad person, the person who is unconscious, the sleeper and theone who forgets. So when the impediment is removed from any of those, he prays in the daruri time and incurs no wrong action. Anyone who prays in these times except those with an excuses are disobedient.]

Chapter 9: On the Adhan and the Iqama

Linguistically *adhan* means informing, whatever it is, and in the Shari'a it is informing people of the times of prayer with particular words.

9.1 The Adhan

9.1a. Its Obligatory Nature

It is obligatory to call the adhan in mosques and wherever people meet regularly to do the prayer.

[The judgement of the *adhan* is that it is an obligation in the form of the *sunan*, i.e. it is a confirmed sunna, in the mosques. It is clear from his words that there is no difference between the communal mosque, i.e. that in which Jumu'a is held, and mosques other than communal. There is also no difference between the mosques being close together or whether there is one mosque on top of another. It is also done is places where groups meet regularly to pray.

It is clear that it is done whether it is in mosques or elsewhere since they seek to call others to the prayers. Every group seeks others. Even if it is not a regular prayer, then it is sunna for there to be an adhan. The irregular group differs from the irregular in that it is a group in a settled place where they do not wait for others in a place outside of a mosque, and so the adhan is not sunna for them nor it is recommended. Indeed, it is disliked. However in a journey, the adhan is recommended. It is recommended for someone who is alone on a journey to do the adhan.

It is unlawful to do the adhan before the time has come, and it is disliked for the sunnas as it is disliked for missed prayers and in the daruri time and the general obligation. The evidence for the sunna nature of the adhan is his command and the perseverance of the people of the *Deen* on it in his time and after his time. This is the exact sunna.

9.1b. Someone who is alone

If you are alone it is good to do the adhan.

[It is recommended to do it, whether at home or on a journey. The well-known position is that this applies particularly to the traveller rather than the resident since it is true that Abu Sa'id heard the Messenger of Allah say, "When you are in your desert or among your sheep give the adhan. No man or jinn or anything within range hears the voice of the mu'adhdhan without bearing witness for him on the Day of Rising."]

9.1c. Status of Iqama

A man must must do the iqama,

[It is confirmed that the legally responsible person is obliged to do the iqama if he is a man. Ibn Kinana applies the words of the author to the obligation, saying that if someone omits it deliberately, his prayer is invalid. 'Abdu'l-Wahhab considers it sunna, i.e. the individual sunna for an adult who prays, even if it is a missed prayer or he is alone, or an imam of only women. and it is enough for a group prayer of only men or one in which there are women as well in respect of the Imam and men. The place of the sunna of the Iqama, if there is enough time. Otherwise it is omitted. The iqama is more confirmed than the adhan because it is connected to the prayer. If there is a gap between them, the iqama is invalid and must be said again."]

9.1d. Women and the Iqama

but for a woman it is only recommended and if she doesn't do it it does not matter.

[A woman commits no wrong action by omitting it.]

9.1e. When the Adhan is done

The adhan for a prayer should not be done before the time of that prayer

[The aim of prescribing the adhan is to announce the arrival of the time, to inform those legally responsible that the time has come so that they can fulfil the oblgiation imposed on them. Therefore it is done after the time has come. It is not permitted to give the adhan before the time for any of the five prayers, even Jumu'a, i.e. it is unlawful. Ibn Habib said that the adhan for Jumu'a is given before the zenith while it is only prayed after it.]

9.1f. The case of Subh

except in the case of Subh when there is no harm in calling the adhan in the last sixth of the night.

["No harm" means that it is recommended to give the adhan in the last two hours of the night before dawn and then to give it again when the time comes in order to follow the sunna. The first adhan is recommended and the second is sunna. Ibn Habib gives the adhan at half of the night. Abu Hanifa does not have an adhan before its time like the other prayers. We have what is in the *Sahih* that the Prophet said, "Bilal calls the adhan while it is still night, so eat and drink until Ibn Umm Maktum calls the adhan." Al-Bistami says that the exact position of the people of the school is that it is given in the last sixth."]

9.1g. Description

The adhan consists of the words:

Allahu akbar, Allahu akbar.
Ash-hadu an la ilaha illa'llah. Ash-hadu an la ilaha illa'llah.

Ash-hadu anna Muhammadan rasulullah. Ash-hadu anna Muhammadan rasulullah.

Then you repeat it in a louder voice than the first time, repeating the testimony. You say: Ash-hadu an la ilaha illa'llah. Ash-hadu an la ilaha illa'llah. Ash-hadu anna Muhammadan rasulullah. Ash-hadu anna Muhammadan rasulullah.

Hayya 'ala's-salah Hayya 'ala's-salah.

Hayya 'ala'l-falah. Hayya 'ala'l-falah.

[*Hayya* means come to quickly without haste that would cause you to lose tranquility and gravity. Haste is disliked then, even if he fears missing the group. Success is obtaining bliss in the Next World.]

9.1h. Subh

Then if you are calling the adhan for subh you add here: As-salatu khayrun min'n-nawm. As-salatu khayrun min'n-nawm. This is not said in the adhan for any other prayer. Allahu akbar. Allahu akbar. La ilaha illa'llah. The last phrase is only said once.

[Even if he is in a desert and there is no one else there. This is the expression and it means that waking up for the prayer is better than the rest obtained by sleep. They disagree about the one who commanded this sentence, i.e. "The prayer is better than sleep." It is said that it was the Messenger of Allah and it is said that it was 'Umar.]

9.2. THE IQAMA

The phrases in the iqama are said only once. It consists of:

Allahu akbar, Allahu akbar.
Ash-hadu an la ilaha illa'llah.

Ash-hadu anna Muhammadan rasulullah.

Hayya 'ala's-salati

Hayya 'ala'l-falahi.

Qad qamati's-salatu'llahu akbaru llahu akbar

la ilaha illa'llah.

[The expressions are said once except for the takbir. Making it single is the School. When it is made double by mistake, it is not allowed in the well-known position. So if error and forgetfulness do not suffice, it is more likely that the deliberate does not suffice either.]

Chapter 10 On how to do the fard prayers and the sunna and nafila prayers connected with them

10.1. The form of the prayer

10.1a. The State of Ihram

Going into the state of *ihram* as far as the prayer is concerned is by saying Allahu akbar and no other expression is acceptable.

[Is ihram the intention or the takbir or both while facing qibla? Al-Ajhurri prefers the later. According to the first, the *idafa* is their words "takbir al-Ihram" is the relation of the associate to its associate. According to the second, it is for clarification. According to the third, is part of the *idafa* of the part to the whole, i.e. the beginning of the attribute is ihram. It is to enter. This applies to all prayers, obligatory or supererogatory.]

10.1b. The Takbir

[It is to say, "*Allahu akbar*" with a natural extension for the amount of an *alif* (*Allaah*). If he fails to do that, then his ihram is not valid, as the one who mentions it only mentions it. No other expression is acceptable if he speaks good Arabic. If he does not speak good Arabic, then 'Abdu'l-Wahhab says that he enters the prayer by the intention except for the non-Arab. Abu'l-Faraj says he enters it in his own language, but this is weak, even if the prayer is not invalidated by analogy with the dislike of the supplication in non-Arabic by the one who can do it in Arabic. But what is relied on is the first statement. The author calls this sentence a "word" following grammatical usage.

[The takbir is obligatory for the Imam and the person playing alone by agreement, and in respect for the one following in the well-known position. It is related from Malik that the Imam bears the responsibility of the takbir al-ihram for the follower. If the Imam omits the takbir al-ihram, intentionally or by forgetfulness, then his prayer is invalid as is the prayer of those following. The evidence for its obligatory nature is found in the two *Sahih* collections where the Prophet said, "The key to the prayer is purification and its sanctification is the takbir and its ending is the taslim." Purification is general and includes wudu' and ghusl.

A precondition of the takbir is that it is done while standing, and it is agreed that it cannot be done before that. If that is omitted in the obligatory prayer, in that he says it sitting, or bending, or leaning on some support in such a manner that if it were removed, he would fall, then his prayer is invalid.

A preconditon of the takbir al-ihram is that be accompanied by the intention. If it comes after it, then it is agreed that it is not allowed. The same applies if it is a lot before it. There are two well-known positions about whether it can be a little before it. One says that it is allowed and the other is that it is not. The preferred one is that it is allowed since it is not transmitted from them that it is a precondition of the accompaniment. The meaning of the precondition that it accompany it according to the second position is that it is not permitted for there to be a gap between the intention and the takbir. It is not a precondition that the intention actually accompany the takbir.]

10.1c. Raising the Hands in the Takbir

At the same time your raise your hands level with your shoulders, or lower,

[When you say the takbir, it is recommended to raise your hands. Their backs are towards sky and palms to earth, level with the shoulders or a

little lower, i.e. the top of the chest. This is for the man. As for the woman, it is a little less than that. Al-Qarafi related that consensus on that. There is disagreement about the judgement of this raising of the hands. Some believe that it is sunna and some that it is a meritorious act, which is what is accepted. The words of the author state that rising is particular to the takbir al-ihram. It is like that in the well-known position. It is also stated that he raises them in ruku' and in rising from two rak'ats.]

10.1d. Recitation

and then begin the recitation.

[The takbir is followed by the recitation without any division between them. Malik disliked for there to be glorification and supplication between the Takbir al-Ihram and the recitation. Some of them recommend separating them with the words, "Glory be to You, O Allah, and by Your praise. Blessed is Your name and exalted is Your majesty. There is no god but You."]

10.1e. How to do Subh

If you are doing Subh you recite the Fatiha outloud.

[The recitation of the Fatiha is obligatory in Subh and other obligatory prayers for the Imam and the one praying alone. There are two positions by Malik in the *Mudawwana* about whether it is in every rak'at or most. The sound one is that it is obligatory in every rak'at. Ibn al-Hajib said that. In general, it means one rak'at, even if it is Subh, Jumu'a or the travel prayer.

As for the one following an Imam, it is recommended for him in what the Imam says silently. As for recitation in what is done outloud, it is sunna.]

10.1f. Basmala

You do not say *bismi'llahi-r-rahmani'r-rahim* for the Fatiha nor for the sura which comes after it.

[When he recites in Subh or other obligatory prayers, he does not recite the basmala in it at all, not in the Fatiha nor in the sura after it, silently or aloud, whether Imam or following. The prohibition in the words designates dislike since it is true that 'Abdullah ibn Mughaffal said, "My father heard me saying, '*bismi'llahi-r- rahmani'r-rahim* ' and he said, 'My son, beware of new things. Beware of doing something new which the Chosen one and his Companions did not do.' 'Abdullah ibn Mughaffal said, "I did not see a man among the Companions of the Messenger of Allah who more hated new things in Islam than him. He was the strongest of the Companions in hating the new. Part of the words of my father were, 'I prayed with the Prophet, Abu Bakr, 'Umar and 'Uthman, and I did not hear any of them say it. So do not say it when you recite. Rather begin with, "Praise belongs to Allah, Lord of the worlds," etc. When you recite in the voluntary prayers, then there is scope. If you wish, recite it. If you wish, do not recite it.'" He disliked seeking refuge (saying, "I seek refuge with Allah") in the obligatory rather than the voluntary prayer.]

10.1g. Saying "Amen"

If you are by yourself or behind an imam you say *ameen* after the words, *wala'd-daalleen*, but you do not say it outloud. An Imam does not say *ameen* if he is reciting outloud but he does if the recitation is silent. There is, however, a difference of opinion about whether the imam should say *ameen* when the recitation is outloud.

[It is recommended to say it. "Amen" means "Answer!" You do this whether you are praying alone in a silent or loud prayer or if you are praying behind an Imam in a silent or loud prayer when you heard him

say "*Wala'd-dalleen*." You do not say it outloud, but silently, even if the prayer is outloud. In other words, it is disliked to say it outloud and recommended to say it silently.

It is disliked for the Imam to say it if the prayer is outloud, and it is agreed that he says it in the silent prayer. However, there is disagreement about the Imam saying it when the prayer is outloud.]

10.1h Reciting the sura

After that you recite ...

[After reciting the *Fatiha*, without any separation between them in the form of supplication or anything else. The judgement of the recitation of a whole sura after the *Fatiha* is that it is recommended and sunna. There must be more than the *Fatiha*, even if it one ayat or part of an ayat . The evidence for the sunna is being more that the *Fatiha* is that the prostration of forgetfulness or lack of it is based on reciting more than the *Fatiha*, not the sura. If he does more than the Fatiha, there is no prostration. Otherwise he prostrates.

It is deduced from his words, "a sura" that he does not recite two suras in the same rak'at. That is the best for the Imam and the one praying alone. There is no harm in someone following the Imam doing that.]

10.1i. What is recited in Subh

one of the larger suras from the *mufassal*. If the sura you recite is longer than that, that is good so long as it is not getting too light.

[The sura which he recites in Subh should be one of the long *mufassal*, the first of which is al-Hujurat (49) according to the accepted position. There are other positions, saying from ash-Shura (42), or from al-Jathiyya (45), or from al-Fath (48) or from an-Najm (53), and extends to

'Abasa (80). The medium ones are from 'Abasa (80) to ad-Duha (93), and from ad-Duha (93) to the end. They are called *mufassal* because of the great number of divisions by the *basmalas*.

It is good if the sura which he recites in the first rak'at of Subh is longer than one of the long *muffasal*, in that you are near a sura which is one of the long mufassal, not that your recite al-Baqara (2) or its like. This length is in respect to the Imam of a limited number of people who are content with that or someone on his own who is strong enough for that. Otherwise, it is best not to make it long. "Good" here means recommended, and his words imply that the sunna is only obtained by reciting one of the long *mufassal*, and the recommeendation is to do more. That is not like that. The sunna is obtained, even by reciting an ayat. "Getting light" is when the darkness is mixed with light and vice versa before it begins to brighten. It is understood from his words that when it is like that, he does not make it long.]

10.1j. The recitation is outloud in Subh

The sura is also recited outloud.

[It is sunna to recite the sura and the *Fatiha* outloud.]

10.1k Ruku'

When you have finished the sura you say Allahu akbar as you go down into ruku' - the bowing position of the prayer.

[You say the takbir **as** you go down. Three things are taken from his words about ruku'. One is the takbir, which is sunna. Is all of it except the takbir al-Ihram is one sunna. That is what Ashhab says and most of the scholars take that position. Some say that every takbir is a separate sunna, and that is the position of Ibn al-Qasim, and it is predominant view. The evidence for it being predominant is that they stipulate the

prostation of forgetfulness for omitting two of them. If all of them had been a sunna, then they would not have imposed because there is no prostration for omitting a part. The upshot of that is that if one takbir is omitted - except for the takbir of the 'Id - by forgetfulness, he does not prostrate. If he prostrates for it before the taslim deliberately or out of ignorance, then his prayer is in invalid. If he omits more than one, even all of them, then he prostrates. If he omits the prostration and a long time passes, then there is a difference according to the two positions. According to the statement that all is one sunna, then the prayer is not invalid by omitting three or more. According to the other, it is invalid when the prostration is omitted since the second mentions that the takbir is connected to ruku', and is recommended. It is like with every action of the prayer except for standing after two rak'ats.]

The Ruku' position

You put your hands on your knees, straightening your back so it is parallel to the ground.

[Ruku' is one of the agreed-upon obligations of the prayer and it has three forms: low, middle and high. The low is to place the hands near the knees. The middle is to place them on the knees without firmness, and the high is that which the author indicated here.

Putting the hands on the knees is recommended, if they are both sound and he is not prevented from putting them on them by some impediment. An impediment would be amputation or shortening. He does not bind any further than having his back straight. Having the back straight is not obligatory. It is recommended since the obligation is general - bowing is obligatory. Its fullest form is to place the hands on the knees. It is recommended for him to spread his fingers based on what al-Hakim and al-Bayhaqi transmitted that when he bowed, he spread his fingers, and then he prostrated, he kept them together.

It is recommended that the back be straight. The author mentioned both placing the hands on the knees and keeping the back straight since one of them does not necessitate the other. Keeping the back straight does not necessitate placing the hands on the knees and placing the hands on the knees does not necessitate keeping the back straight. Are both of them recommended or is simply one of them alone recommended?]

The position of the head in ruku'

You do not lift your head nor do you let it drop. You make sure that the insides of your arms are away from your sides.

[This is recommended. Omitting any of that does not invalidate the prayer. It is recommended that the insides of the arms be far from the sides. That is explained as being not very far, but a medium amount. This does not apply to both men and women. Women keep their arms to the sides. He does not mention the straightness of the knees, and he is not excessive in bowing by making them straight. He is also silent about the straightness of the feet which is that they are not right together. That is disliked. It is recommended that it be avoided.]

Awareness in ruku'

In both ruku' and sujud you should be aware of your state of complete submission.

[Your heart must be humble. This is recommended as is well-known with the fuqaha'. Ibn Rushd said that it is one of its obligations although the prayer is not invalidate if it is omitted. It is obligatory in part of it, and must exist in the ihram.]

What to say after that

And then if you are by yourself you say, Allahumma rabbana wa laka'l-hamd (O Allah, our Lord, all praise belongs to You.) This is not said by the imam. Someone praying behind an imam does not say Sami'a'llahu liman hamidah, but he does say, Allahumma rabbana wa laka'l-hamd.

[Then you say, "O Allah, our Lord, all praise belongs to You", meaning You accept and You are praised for accepting or for your allowing that act of worship to be completed. You say this if you are alone or behind the Imam. The Imam only says the first statement. Someone praying behind an imam only says, "O Allah, our Lord, all praise belongs to You". The basis for these details is in the *Muwatta*' and elsewhere which report that the Prophet said, "When the Imam says, 'Allah hears whoever praises Him,' say, 'O Allah, our Lord, all praise belongs to You' for the previous wrong actions done by the one whose utterance coincides with that of the angels are forgiven," i.e both minor and major. They are only expiated by repentance or the pardon of Allah. In a version of at-Tirmidhi, "Praise is Yours," This hadith demands that the Imam does not say, "Our Lord, praise is Yours," and the one following does not say, "Allah hears whoever praises Him.]"

10.1m Standing up straight after ruku'

You stand up straight, still, and with the limbs settled

[When you lift your head from ruku', you stand up straight and still. There are two things here: stillness, which is obligatory and will be discussed, and straightness, which is the sunna according to Ibn al-Qasim in all the pillars of the prayer and obligatory according to Ashhab and it is sound. The difference between stillness and straightness is that straightness has to do with stature and stillness involves the limbs resisting for a time.]

10.1n Prostation

and then go down into sujud without going into a sitting position on the way.

[Then you go down to the ground in prostration, going into prostration from a standing position as the Prophet did. There is no disagreement that prostration is obligatory. You do not prostate from a sitting position as some people of knowledge say. It is useful to be precise. Ash-Shafi'i states that a very slight sitting before prostration is part of the sunna. The argument of some of the people of knowledge that he did that and the argument of one who denies that he sat before prostration is what is related from 'A'isha that he did that at the end of his life because the movement of his noble limbs had become heavy. It was not to change the sunna. It was due to an excuse, and it is negated when the excuse does not exist. If this sitting occurs by forgetfulness, and is not long, there is no harm. If it is long, then he prostrates on account of it. There is disagreement about when it is deliberate. That famous position is that if it is not long, there is no harm. If it is long, there is harm. Length is considered inasmuch as someone looking would think that he has turned away from the prayer.]

The takbir

As you go down into sujud you say, "Allahu akbar."

[This is sunna to fulfil the pillar with the takbir. He did not mentioned what touches the earth first. It is recommended to place the hands before the knees when you go into prostration and to have the hands leave the earth after the knees in rising by his command to do that. That is what the people of Madina did. As for what the people of the *Sunan* relate stating that when he prostrated, he put his knees down before his hands and when he came he lifted his hands before his knees, ad-Daraqutni

said that only Sharik has it, and things are said about Sharik. Some claim that it is an abrogated sunna.]

What part of the face is on the ground

You put your forehead and nose on the ground,

[The forehead is what is between the temples to the forelock. As much of it as possible is placed on the ground. This is recommended. As for fulfilling the obligation in that, it is enough to place the least amount of the forehead. When he puts his forehead on the earth, he should not press it hard on the earth so that it leaves a mark - that it disliked because it is the action of the ignorant who have no knowledge.

Prostration on both the forehead and nose is obligatory. There are various positions if it is confined to one of them. The famous one is that if it is confined to his nose, it is not enough and he must repeat it. If it is confined to his forehead, it is enough although he should repeat it within the time. It is said to apply to both ikhtiyari and daruri times. This is if the forehead is sound. If there are ulcers on the forehead, it says it in the *Mudawwana* that he indicates but does not prostrate on his nose because prostration on the nose naturally demands prostration on the brow. So when its obligation does not apply, its consequence does not apply. If he goes down and prostrates on his nose, Ashhab says that it is enough for him because it is more than indication. The *Mudawwana* says that it is disliked to prostrate on his turban.]

Position of the hands

with your palms flat on the ground, fingers facing qibla, on a level with your ears or further back - there being no fixed position for the hands -

[It is recommend he put the palms on the ground without barrier. It is recommended for the face and hands to be directly touching the ground because it is humilty and it is what it is disliked to prostrate on what is luxurious and comfortable like wool and cotton. Matting is overlooked because it is like the earth, but it is best to forego it. Prostration on it is different from the first. The fingers are spead out on the earth. This is stressed and it is recommended that they face qibla. Al-Qarafi says that the reason for that is that they prostrate and so face qibla. Prostration itself is done on the hands, like the knees and the toes of the feet, and so it is sunna. They should be level with the ears or somewhat further back There is no definition as to where the hands are placed based on the statement of the *Mudawwana* that there is no definition in that. It is all permitted, and there is no obligation. If he does it differently, he only commits something disliked.]

Position of the Arms

although you must make sure your forearms are not touching the ground. Your arms should not be close against your sides but should be held out a little.

[Since the Prophet forbade for a man to rest his forearms on the ground like a wild animal. One variant has "like a dog." It is disliked for a man to do this in prostration and it is disliked for him to rest them on his thighs. It is forbidden, meaning disliked, for a man to hold his arms close to his sides in prostration. It is recommended for a man to keep his arms away from his sides as the Prophet did. In the two *Sahih* collections it reports that in prostration he kept his arms from his sides so that the white of his armpits could be seen.]

Position of the Feet

During sujud your feet should be upright with your toes on the ground facing forwards.

[The toes should be facing qibla and the knees should be apart and the stomach away from the thighs. The proof that that is part of the sunna is what Abu Dawud transmitted: when the Prophet prostrated, he had a gap between his thighs and they were not against his stomach at all.]

What to say in sajda

And then when you are in sujud you can say if you like, "Subhaanaka rabbi, dhalamtu nafsi wa 'amiltu suu'an faghfir li." (Glory be to You my Lord. I have wronged myself and acted badly, so forgive me.) or if you like you can say something else.

[You have a choice in what you say between saying the first or not, and secondly between these words or other dhikrs. The first choice indicates a rejection of the one who says that *tasbih* is obligatory. The second choice indicates the refutation of the one who says that this must be said, i.e. even if the glorification is recommended, it must be with these words, and so the recommendation is only obtained by it. The result is that glorification in prostration is recommended by the author and others. The expression of the choice means that taken literally, one sides are equal, only indicates the rejection.]

You can also make du'a' in your sujud if you want.

[It is recommended to make supplication using the Qur'an or something else, but it must be something permitted in the Shari'a and custom which is not denied, and the prayer is not invalidated by it. This is a separate supplication from the glorification.]

Length of prostration

There is no particular limit to the length of time you may stay in sujud but the shortest is the time it takes for the whole body to become still.

[There is no limit to prostration in the obligatory. For the one praying alone, it should be not excessively long. If it is excessively long, it is disliked. There is no harm in it in the voluntary. For the Imam it is what will not harm those behind him. Its minimum which is adequate is that in which the joints become still and at rest. Stillness is obligatory in the prostration and in all the pillars of the prayer. But the *Risala* only deals with stillness in this place about the minimum which makes the obligatory prostration adequate. It is obligatory because that obligation, which is prostation, rests on it. There is disagreement about remaining longer than stillness. The view of the author of *al-Mukhtasar* is that it is sunna. He examines what is defined as extra in respect of the individual,the Imam and the one following, and whether it is equal in the length regarding it and other positions of the prayer or not. What is said in *al-Mukhtasar* demands that all of that be equal.]

10.1o. Sitting between prostrations

Then, saying, "Allahu akbar", you lift your head and sit back. In the sitting position between the two sajdas your left foot is folded underneath and your right foot remains upright and you lift your hands from the ground and put them on your knees.

[Then you say, "Allah is greater" while you are coming up. This rising is an obligation without disagreement, and multiple prostrations are inconceivable without a division between them. After you lift your head, you must sit straight. The bottom of the toes of the right foot remain on the earth. It is not understood from his words that you sit between the two prostrations as you sit in the tashahhud. As for the sitting of the person who prays sitting while he recites and bows, it is recommended to be cross-legged. He silent about where to place the left foot. 'Abdu'l-Wahhab says that he puts it under his right thigh. It is said that it is between his thighs. It is said that it is outside. Men and women are the same in that.

You remove your hands from the earth and put them on your knees. He says in *al-Jawhar* that he puts his hands near his knees with his fingers level. If he does not lift his hands from the earth, there are two positions about the invalidity of the prayer. The best known is that it is invalid. The soundest, based on what al-Qarafi said, is that it is not invalid. It is accepted because this rising from the earth is only recommended and not doing something recommended is not one of the things which invalidate the prayer.]

10.1q. Second prostration

You then go into sujud again repeating what you did the first time.

[Then after coming up from the first prostration, you prostrate again like the first with the relevant details.]

10.1r. Rising from prostration

Then you stand up again directly from sujud pushing yourself up with your hands. You do not go back to the sitting position and stand up from there but rather you do as I have described. As you stand up you say, "Allahu akbar."

[After the second prostration, you stand up as you were without sitting. This indicates refutation of the Hanafi position. Ibn 'Umar said that if he sits and then stands, and it is deliberate, he asks Allah's forgiveness and does not have to do anything. If he forgets, he prostrates after the salam. The one who does it deliberately does not have to prostrate. Not going back to the sitting position indicates that it differs from the Shafi'ites who say it is sunna for him to rise for the second and fourth rak'ats from a sitting. We consider it meritorious for him to go back to the standing and to come up directly with your hands. You say the takbir during the move because it is recommended to say the takbir when beginning actions in the prayer.]

10.1s. Recitation in the second rak'at

You then recite as much as you did in the first rak'at or a little less

[After the takbir, you recite the *Fatiha* and a sura. The second should be similar or shorter than the length of the first. Both are affirmed. The author follows al-Fakhani is that the recommended is that the first rak'at should be longer than the second. The evidence for that is found in the two *Sahih* collections where the Prophet made the first long and the second short. What is meant is that the first is longer than the second in time, even if the recitation in the second is more, but he recited slowly in the first. It is recommended that he recites by the order of the Qur'an, and reversal of order is disliked. However, he if inverts the order, there is nothing against him. The disliked reversal is to reverse the suras or recite the last half a sura and then the first half. It is like that in one or two rak'ats. When he does the forbidden reversal, then the prayer is invalid. That is like reversing the order the ayats of the same sura in the same rak'at.]

and do the same again

[This means that you repeat all the previous actions. Then you perform the prostration and sitting as was already described.]

10.1t. The *Qunut*

except that (being Subh) you also recite the qunut after doing ruku' although you can, if you want, recite it before ruku' after finishing your recitation of Qur'an.

[The Qunut is done in the second rak'at after coming up from ruku', although it could be before the ruku', there being a disagreement about whether it is meritorious or sunna. If it is sunna and he omits it and he does not prostrate for it, his prayer is is invalid. If it is meritorious and

he prostrates for it, his prayer is invalid if the prostration is before the salam. It appears from the words of the author that it is better after ruku'. It is the position of Ibn Habib. The well-known position is that it is better before ruku' based on what is in the Sahih that the Prophet was asked whether it was before or after and he replied that it was before. It is also based on kindness to the one who is preceded and because that is what 'Umar continued to do in the presence of the Companions.

The well-known position is that he does not raise his hands as he does not raise them in saying "Amen" or in the supplication of the tashahhud. It is better to do it silently because it is a supplication. If he forgets to do it before ruku', he can do it after it if he remembers. He cannot go back from ruku' if he remembers. If he does go back, then his prayer is invalid because he went back from an obligation to something recommended.]

10.2 QUNUT

The qunut consists of the words:

Allahumma innaa nasta'eenuka wa nastaghfiruka wa nuuminu bika wa natwakkalu 'alayka wa nakhna'u laka wa nakhla'u wa natruku man yakfuruk. Allahumma iyyaaka na'budu wa laka nusalli wa nasjud. Wa ilayka nas'a wa nahfid. Narju rahmataka wa nakhaafu 'adhaabaka'l-jidd. Inna 'adhaabaka bil-kaafireena mulhiq.
(O Allah, we seek help from You and ask forgiveness of You and believe in You and rely on You. We humble ourselves before you and renounce all other dins. And we abandon all who reject You. O Allah it is You we worship and to You that we pray and prostrate and for You that we strive and struggle. We hope for Your mercy and fear Your certain punishment. Your punishment will surely come to those who disbelieve.)
[This is its chosen expression among the Malikis, although it is said, "We rely on you" is an addition in the Risala. One variant has after it, "We praise You well."]

10.3. THE FINAL SITTING, *TASHAHHUD* AND *SALAM*

10.3a. The final sitting

Then you do the same regarding your sujud and sitting as has already been described. When you sit back again after your two sajdas you keep your right foot upright with the toes pointing forward and fold your left foot underneath with your left buttock resting on the ground, not on your left foot.

When you finish the qunut, you go down into prostration without sitting. You sit between the two prostrations as was described.

[When you sit after the second rak'at for the tashahhud, you have your right foot upright with the toes forward, and the left foot folded underneath, sitting on your left buttock. That is the sound transmission. It is related as "buttocks" which it a mistake because if he sits on them, that it resembles squatting which is disliked, even though it is not actual squatting which is to put the buttocks on the ground and keep the thighs upright and place the hands on the ground, as a dog sits. You do not sit on your left foot. He said that in reference to Abu Hanifa who says that he sits on his left foot. The description which he mentioned resembles that in the *Mudawwana* in all the sittiing positions of the prayer.]

Another foot position

If you want, your right foot can be at an angle, with the side of the big toe resting on the ground. Both of these positions are acceptable.

[Without having the foot upright. What the shaykh mentioned is opposed to al-Baji that the bottom of the toes are on the ground and not the side. It is preferred. Then you sit for the tashahhud after the two prostrations of the second rak'at.]

10.3b. The *tashahhud*

You then say the tashahhud, which consists of the words: at-tahiyyatu lillah. az-zakiyatu lillah. at-tayyibatu's-salawatu lillah. as-salamu 'alayka ayyuha'n-nabiyyu wa rahmatu'llahi wa barakatuh. ass-alâmu 'alaynâ wa 'ala 'ibadai'llahi's-salihin. ash-hadu an la ilaha illa'llahu wahdahu la sharika lah. wa ash-hadu anna Muhammadan 'abduhu wa rasuluh.

(Greetings are for Allah, Good actions are for Allah. good words and prayers are for Allah. Peace be upon you, O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon the righteous slaves of Allah. I bear witness that there is no god except Allah alone without partner and I bear witness that Muhammad is His slave and His Messenger.)

[These are the words of the tashahhud preferred by most of the Malikis. In the *Mudawwana* instead of "Muhammadan 'abduhu" he has "Muhammad 'abdu'llah" (Muhammad is the slave of Allah).]

10.3c. The *salam*

If you then say the salam at this point, your prayer is valid.

[i.e. after saying, "I bear witness that Muhammad is His slave and His Messenger", the prayer is valid, whether you say part of it or leave part. Ibn Naji said, i.e. with either of the two statements or if he says something else. It is not valid to say that it is enough in the form of perfection because he did not mention the prayer on the Prophet. So the truth is that it it a discarded description.]

10.3d. Possible Additions

You can also add to this, one possibility being:

wa ash-hadu anna'lladhi jaa'a bihi Muhammadun haqq. wa anna'n-naara haqq. wa anna's-saa'ata aatiyatun la rayba fihaa. wa anna'llaha yab'athu man fi'l-qubuur.

Allahumma salli 'ala Muhammadin wa 'alaa aali Muhammadin warham Muhammadan wa aala Muhammadin wa barik 'ala Muhammadin wa 'ala ali Muhammadin kama sallayta wa rahimta wa barakta 'ala Ibrahima wa 'alaa aali Ibrahima fi'l-'alamîna innaka hameedun majeed.

Allahumma salli 'alaa malaa-ikatika wa'l-muqarrabeena wa 'alaa anbiyaa-ika wa'l-mursaleena wa 'ala ahli taa'atika ajma'een.

Allahumma'ghfir li wa liwalidaya wa li a'immatina wa liman sabbaqanaa bi'l-eemani maghfiratun 'azmaa.

Allahumma inni as'aluka min kulli khayrin sa'alaka minhu Muhammadun nabiyyuka wa a'udhu bika min kulli sharrin ista'adhaka minhu Muhammadun nabiyyuka.

Allahumma'ghfir lana ma qaddamnâ wa ma akharnaa wa ma asrarnaa wa ma a'lannaa wa ma anta a'lamu bihi minhaa.

Rabbanaa aatina fi'd-dunyaa hasanatan wa fi'l-akhirati hasanatan wa qina 'adhaaba'n-naar wa a'udhu bika min fitna'l-mahya wa'l-mamati wa min fitna'l-qabri wa min fitna'l- masîhi'd- dajjali wa min 'adhaabi'n-naari wa su'i'l-maseer.

As-salaamu 'alayka ayyuha'n-nabiyyu wa rahmatu'llahi wa barakatuh. As-salaamu 'alaynaa wa 'ala 'ibaadi'llahi's-saaliheen.

(And I bear witness witness that what Muhammad brought is true. And that the Garden is true. And that the Fire is true. And that the Hour is coming and there is no doubt about it. And that Allah will raise up those in the graves.

O Allah pray on Muhammad and the family of Muhammad and have mercy on Muhammad and the family of Muhammad as you prayed on and had mercy on and blessed Ibrahim and the family of Ibrahim. In all the worlds, You are praiseworthy, glorious.

O Allah, pray on Your angels and those brought near and on Your Prophets and Messengers and on all the people who obey You.

O Allah, forgive me and my parents and our imams and those who have gone before us with iman with complete forgiveness.

O Allah, I ask You for every good thing that Muhammad, Your Prophet, asked You for and I seek refuge in You from every evil that Muhammad, Your Prophet, sought refuge in You from.

O Allah, forgive us for what we have done and for what we have put off doing, for what we have kept hidden and what we have done openly and for what You have more knowledge about than us.

Our Lord give us good in this world and good in the next world and protect us from the torment of the Fire. I seek refuge in You from the trials of life and death and from the trials of the grave and from the trials of the Dajjal and from the torment of the Fire and from an evil end.

Peace be upon you, O Prophet and the mercy of Allah and His blessings. Peace be upon us and upon the right-acting slaves of Allah.)

[It is understood that when he has said the supplication, it is recommended that he does not end with the salam until he has asked for peace on the Prophet. That is necessary for everyone who prays as opposed to the well-known position which is what al-Qarafi related: that the salam on the Prophet is not repeated when he makes supplication. Malik recommended it for someone following an imam. When the imam says the salam, he says, "Peace be upon you, etc." This addition is weak. Part of its weakness is that it is particular to the one following the Imam as Malik stated.]

10.3e. Saying the Salam

Then you say, "As-salamu 'alaykum" once,

[After that you say that salam which ends the prayer. This salam is obligatory without dispute for every one who prays, Imam, individual, or

following an Imam. He only ends the prayer by it. Specificially incumbent is the phrase which the shaykh mentioned, by definition and order and in the plural. If he says, "Upon you peace" or "My peace upon you" or "The peace of Allah on you," or he omits the definite article, it is not adequate.

Does he require an intention to end the prayer or not? There are two well-known positions. The predominant, as is seen in the words of Ibn 'Arafa, is that it is not a precondition, although it is recommended to do it. Indeed, the one who is unable to say the salam of release as a sentence leaves the prayer by his intention. Then the intention of ending is obligatory and the salam does not remove when he is unable to say part of it.]

10.3f. The direction faced in the salam

starting to the front and turning to the right a little as you say it. This is what the imam does or anyone doing the prayer by themselves.

[This means you incline your head a little to the right. The description of the salam differs with the different people praying. An imam or one praying alone say one salam, facing the front and a little to the right. He begins by facing is desirable. It is sunna for anyone who prays to say the taslim aloud. As for the taslim of someone else, namely someone following the Imam, it is best to say it silently. This applies to the man who has no one with him so that any error might result. "Saying it outloud" in the case of a woman is so that she can hear herself.

It is recommended for everyone praying to say the takbir al-ihram aloud, and that is the case for the rest of the takbirs for the Imam as opposed to the one who is following, and for the person praying alone. It is recommended for the Imam to make the salam and takbir al-ihram short

so that the one following does not precede him in them. What is meant is quickness without extension.

The Imam and the one praying alone should begin to say it while facing the qibla because they are commanded to face qibla in all the pillars of the prayer, and the salam is one of its pillars, even though he leaves the prayer by it. It is recommended to turn to his right side in the course of it. If he says the salam on his left, intending to end it, and does not say it to his right, his prayer is not invalid according to the well-known position because he has omitted the right, which is meritorious. If the one following says the salam to the left, intending the merit with the intention of returning to the salam of ending, and he believes that the salam to the left is meritorious which does not end the prayer, and a long time passes before he returns to the final salam, then his prayer is invalid. If it is not a long time, it is not invalid because the salam to the left is for a meritorious action, and is ot like extraneous speech before the final salam because when he does it with the intention of bringing the final salam after it, he becomes like someone who advances something meritorious before an obligation.]

10.3g. The salam for someone following an imam

If you are doing the prayer behind an imam you say the salam once, turning a little to the right, then you return the salam of the imam towards the front and

[The salam of the follower is to say one salam, turning to the right for all of it, as opposed to the Imam and the one praying alone. The difference between him and them is that their salam and response is considered to be part of the prayer, and so they face the qibla at the beginning like all the actions of the prayer. As for the one following the imam, his Imam said the salam, and he follows him, so it means that his prayer had ended.

It is sunna for the one following to say another salam other than the final salam in the direction of the Imam, neither to the right nor the left. He indicates him with his heart by agreement.]

10.3h. The salam to the left

then, if there is anyone on your left who has said the salam, you greet them in return. You do not say the salam to the left if no one has said it to you.

[It is sunna for the one following the Imam to respond to his left is there is anyone on his left. It is evident that he does not say the salam to his left unless there is someone on his left who greets him. If he supposes that he did not greet him, as when he omits the salam, for instance he might suppose that he does greet him, but that is not the case.

The position of the necessity of returning the salam to the left by the one following if there is someone on the left and he earns the merit of the group. If there is no one on his left who obtains the blessing of the group since there is actually no one there or there is someone who comes late and missed a rak'at with the Imam, he is not asked to return it. Bahram said, "Does the one who comes late who caught the merit of the group reply to the Imam and to the one who said the salam on the left when he finishes the prayer or not since he has missed its place? There are two transmissions: one is that which Ibn al-Qasim prefers and it is accepted is that he replies, even if the person on the left has departed.]

10.3i. The position of the tashahhud

While you are saying the tashahhud you put your hands on your thighs, clenching all the fingers of the right hand except your forefinger which you extend with its side uppermost.

[It is recommended in the tashahhud to place the hands on the thighs close to the knees. This varies. The fingers of the right hand are clenched except for the forefinger. It is extended in supplication and glorification to indicate tawhid and to avert Shaytan based on what is in Muslim, "It drives away Shaytan and he does not forget as long as he is pointing with his finger." You point with its side uppermost. The bottom of the finger is not facing the earth or the reverse.]

Whether or not to move the finger

There is some difference of opinion as regards the movement of this finger.

[Ibn al-Qasim says that it is moved, and he is relied on. Others say that he does not move it. Based on the position that it is moved, there are two positions about whether it moved in the entire tashshhud or only in the testimonies because he confines himself to the first in the *Mukhtasar*. The literal meaning of the words of Ibn al-Hajib is that the second is the well-known one. There is also a question in both statements about whether it is moved from right to left or top to bottom.]

Holding it straight

There are those who say that by holding it straight you are indicating that Allah is one God while those who move it say that doing so repels shaytan. I think they mean by this that you will be reminded in your prayer by moving your finger of what will prevent you, if Allah wills, from becoming forgetful and distracted. Your left hand is laid flat on your left thigh and you neither move it nor point with it.

[This means he holds it straight without moving it. The one who moves says that it is to repel Shaytan. The left hand is kept flat, and he does not point with it, even if his right hand has been amputated.]

10.4. DHIKR AFTER PRAYER

It is recommended to do dhikr immediately after the prayer. You say 'Subhanallah' (Glory be to Allah) thirty-three times, 'Alhamdu lillah' (Praise be to Allah) thirty-three times, and 'Allahu akbar' (Allah is greater) thirty-three times. Then you seal the hundred by saying, 'La ilaha illa llahu wahdahu la sharika lah. Lahu'l-mulku wa lahu'l-hamdu wa huwa 'ala kulli shay'in qadir.' (There is no god but Allah, alone without partner. His is the kingdom and His is the praise and He is capable of all things.)

[This is done after the obligatory prayers without being separated by the nafila based on what Abu Dawud transmitted that a man prayed the obligatory prayer and then did the voluntary and 'Umar ibn al-Khattab pulled him and made him sit. He said, "Do not pray the nafila prayers straight after the obligatory." The Prophet said to him, 'You are right, Ibn al-Khattab. Allah has made you right. The dhikr is done with the expressions heard from the Lawgiver.

This is the sound transmsision with the omission "makes lives and dies." Praise is put before takbir and the reverse is done in the salam and asking permission. That is done to be mindful of what is found in the hadith. The like of what is here is in the two *Sahih* collections. In the *Muwatta*' is like what is in the chapter of greeting and asking permission. The literal meaning of what he says here is that he says, "Subhanallah, al-hamdu lillah and Allahu akbar" 33 times in a group. A group prefer it, including Ibn 'Arafa. Some prefer that they be said with each one separate.]

10.4b. After Subh

It is also recommended, after Subh, to continue to do dhikr and ask forgiveness and glorify Allah and make du'a up until sunrise or near to sunrise, but this is not obligatory.

[It is clear from his words that dhikr is other than asking forgiveness, glorification and supplication, Some of them say that dhikr is recitation of the Qur'an. Some of them say that dhikr is explained by what is after it, so it is as if he were saying that it is asking forgiveness, etc.

This lasts until sunrise based on what at-Tirmidhi related and said is hasan. The Prophet said, "If anyone prays Fajr in a group and then sits remembering Allah until sun rises and then prays two rak'ats, has a reward similar to that of a completed hajj." This is what the Salaf did. They persevered in occupying themselves with dhikr after Subh until the end of its time. It is not obligatory, recommended.]

10.4c. Fajr

There are also the two rak'ats of Fajr which you do before Subh after the break of dawn. In each rak'at you recite just the Fatiha silently.

[It is not enough if they are done before dawn, even with only the takbir al-ihram because it is a prayer which is prescribed and is dependant on the obligation of Fajr and it is connected to the time of that which it follows. Two positions are related about it in the general chapter of the obligatory prayers: desirable and sunna. The author of al-Mukhtasar follows the first, which is the accepted position. He must intend them as the two rak'ats of Fajr to make them distinct them from the nafila prayers. If he prays without that, they are not adequate.

In each rak'at it is recommended to only recite the Fatiha silently, based on what is in the *Muwatta*' and Muslim where 'A'isha said, "The Messenger of Allah used to pray the two rak'ats of Fajr and they were so quick that I would wonder whether he had said the Fatiha in them or not." Ibn al-Qasim related that Malik recited the Fatiha and a sura in them from the short ones based on what is in Muslim that after the

Fatiha, the Prophet recited in them al-Kafirun and Ikhlas. It is better to pray them in the mosque.

If someone enters the mosque without having prayed them, and the iqama for the obligatory prayer has been given, he omits them and joins the Imam and then prays them after sunrise. Their time extends until midday. He does not make up any nafila prayers except them. Whoever sleeps through Subh until sunrise, prays Subh and then prays them afterwards. Whoever forgets them until he has prayed Subh or the time of Subh has come does not pray them until sunrise.]

10.5. DHUHR

10.5a. Recitation in Dhuhr

Your recitation for Dhuhr should be from suras like the ones you recite at Subh or a little shorter,

[His words means that the recitation in Dhuhr is equal is what is recited in Subh, i.e. from the long mufassal. That is what Imam Ashhab and Ibn Habib said. Imam Malik said that it is recommended that the recitation in Dhuhr be a little less than the recitation in Subh. That is preferred. If, for example, he recited al-Fath (48) in Subh, he recites something like al-Jumu'a (62) or as-Saff (61). It is not understood that he recites the middle mufassal. Ibn 'Umar considers that the words of the author imply a third position, which is choice.]

10.5b. Outloud

but at Dhuhr none of the recitation is done outloud. In both the first and the second rak'ats you recite the Fatiha and another sura silently and in the last two rak'ats you recite just the Fatiha silently.

[Recitation is not outloud in Dhuhr, either the Fatiha nor anything else. Reciting the Fatiha in the last two is by way of sunna.]

10.5c. *Tashahhud*

You do the *tashahhud* in the first sitting as far as the phrase, 'wa ash-hadu anna Muhammadan 'abduhu wa rasuluh.'

[He adds this.]

105d. *Takbir* for standing

After that you stand up but do not say 'Allahu akbar' until you are fully upright. This is what someone leading the prayer, or someone doing the prayer by themselves, does.

[Then after finishing the tashahhud to the point mentioned, he rises for the third rak'at, and he does not say the takbir when he begins to stand up, but waits until he is upright according to what is known in the school in action and because he has not moved from a pillar. He has moved from a sunna to a fard, and the fard is more entitled to the takbir, and because rising for the third is like beginning a new prayer. That is how the Imam and person praying alone does it.]

10.5e. Standing when following the Imam

If you are doing the prayer behind an imam you stand up after the imam has said, 'Allahu akbar', and, when you are fully upright, you say, 'Allahu akbar'.

[If you are following an Imam, you only stand up after the Imam has said, "Allahu akbar" and has finished it. When you are upright, then you follow the Imam, and imitating it. All his actions come after the Imam's actions. In the hadith, "Do not precede me in bowing or prostrating."

This tell us that the one following the Imam follows him because the prohibition against going ahead of him demands following. It negates getting ahead and doing at the same time.]

Apart from that, the rest of the prayer, in terms of the ruku', sujud and sitting, is the same as has been mentioned for Subh.

The rest of the prayer is the same as that for Subh. The proof of that is that the Prophet did it and taught people. There is no difference in what was mentioned between him doing it and teaching people.

10.5f. Nafila prayers after Dhuhr

It is recommended to pray four nafila rak'ats after Dhuhr, saying the salam after each two rak'ats.

[This is because of the Prophet said, "If anyone perseveres in the four rak'ats before Dhuhr and four after them, Allah will forbid him to the Fire," i.e. perserving in what was mentioned is a reason for not committing a major wrong action. Then his body will be forbidden to the Fire. The hadith is related by Imam Ahmad and the people of the Sunan, i.e. at-Tirmidhi, an-Nasa'i, Ibn Majah and Abu Dawud. If you said that since it is encouraged to persevere with four before and four after, why does the author confine it to the four afterwards, I said that it is to point out the difference between it and 'Asr where he only does nafila before it. At-Tata'i mentioned it.]

10.6 'Asr

10.6a. Nafila before 'Asr

It is also recommended to do the same before 'Asr.

[He should do four rak'ats before 'Asr since it is confirmed that he said, "May Allah show mercy on a man who prays four rak'ats before 'Asr" which has the senses of, "O Prophet, show mercy." There is no doubt that his supplication is answered.]

10.6b Recitation in 'Asr

For 'Asr you do exactly the same as we have detailed for Dhuhr except that in the first two rak'ats, after reciting the Fatiha, you recite one of the short suras such as "*Wa'd-duha*" (93) or "*Innaa anzalnaahu*". (97)

[You do 'Asr like Dhuhr except that you use shorter suras. So if you begin it with one of the long mufassal, you should leave it and recite a short sura.]

10.7 Maghrib

10.7a Recitation in Maghrib

For Maghrib you do the recitation outloud in the first two rak'ats, in each rak'at reciting the Fatiha and one of the short suras. In the third rak'at you recite the Fatiha on its own and do the tashahhud and say the salam.

[The third rak'at is done silently. The 'amal is that short suras are used. What is transmitted to the contrary is, interpreted, i.e. an-Nasa'i and Abu Dawud transmitted that the Prophet used to recite *al-A'raf* (7) in Maghrib. So it is interpreted that it is possible that he knew that those behind him would not be harmed by that. Otherwise, he would have continued on an easier action.

You only recite the Fatiha in the third. After it, you do the tashahhud and prayer on the Prophet and make supplication after that and say the salam.]

10.7b. Nafila prayers

It is recommended to do two nafila rak'ats after Maghrib and if you do more than this, that is good. Six rak'ats are specifically recommended.

[He stressed the recommendation to pray two rak'ats after finishing Maghrib and more is good. Evidence for its recommendation lies in the fact that the Prophet did it. What is more than two is good since He says, "Whoever does an atom's weight of good will see it." Six are recommended since he said, "If anyone prays six rak'ats after Maghrib in which he does not say anything evil [i.e. haram] between them, that is equal to the worship of twelve years." Ibn Khuzayma related it in his *Sahih* as did at-Tirmidhid. That which is in at-Tata'i from the *Sahih* of Ibn Khuzayma is that they are equal to the worship. One of them said, "To the worship of the Banu Israel". In the Collections of at-Tabarani, "If anyone prays six after Maghrib he will be forgiven his wrong actions, even if they are like the froth of the sea."]

10.7c. Nafila between Maghrib and 'Isha'

Doing rak'ats in the time between Maghrib and 'Isha is also strongly recommended.

[Al-Ghazali said, "The Messenger of Allah was asked about the words of the Almighty, "Their sides avoid the beds," and said that it is praying between Maghrib and 'Isha'. The Prophet said, "You must pray between Maghrib and 'Isha', It removes vanities," i.e. it expels what someone has disliked words or actions so that he is not criticised for it nor is he

moved to a forbidden action or from a small sin to a great one which only repentance ot Allah's pardon expiates.]

10.7d. Other aspects of Maghrib

As for the other aspects of Maghrib, they are the same as has already been mentioned regarding the other prayers.

[This is to have the recitation is outloud in the first two with the Fatiha and a short sura, and only the Fatiha silently in the third.]

10.8 'ISHA'

10.8a Recitation in 'Isha'

For the last prayer, 'Isha - which is also known as al-'Atama although the name 'Isha is more appropriate -you pray the first two rak'ats outloud, reciting in both of them the Fatiha and another sura. The suras chosen should be a little longer than those chosen for 'Asr. In each of the last two rak'ats you recite the Fatiha to yourself. The other parts of the prayer are done as has already been described.

[Recitation in the 'Isha' prayer is longer than 'Asr. In the last two rak'ats, he recites only the Fatiha.]

10.8b. Sleeping before 'Isha'

Sleeping before 'Isha is disliked, as is talking after it unless there is a special need to do so.

[It is not disliked to talk after its time has come and before it has not been prayed. Al-Fakhani said that that. It is also disliked to sit up without conversation out of the fear of missing Subh and rising at night.]

10.9 VOLUME OF RECITATION

10.9a. What is meant by 'reciting to yourself'

The expression 'reciting to yourself' as far as the prayers are concerned means moving the tongue as you articulate the words of the Qur'an. The expression 'reciting outloud' means, if you are doing the prayer alone, that you recite loud enough for yourself and anyone standing close to you to hear.

[This is the least of doing it silently and the most is that he only can hear himself. By moving his tongue, he is careful more reciting in the prayer with his heart. It is not enough. So if he were to take an oath that he would not recite Qur'an and then made it flow in his heart, he does not break the oath of not reciting.

The minimun of outloud in the obligation is that someone can hear it and its maximum has no limit. Al-Fakhani said, "Look at the meaning of his words, "if he is alone." It is clear that it is not for the Imam who sought make it heard by himself to hear himself and those behind him. If the one behind him does not hear him, his prayer is valid. The sunna is achieved by the one next to him hearing. Al-Aqfahasi said that if he is alone. he considers the one near him to be another persons praying, and so his principle in being outloud is that of a woman.

The place where the outloud is demanded, as in the commentary of Shaykh, is when it does not entail confusing someone else. Otherwise that which will result in confusion is forbidden, even if it leads to making the sunna fall because he does not commit anything unlawful to obtain the sunna.]

10.10. Women's Prayer

10.10a Women's recitation

Women's recitation in the Qur'an should be quieter than that of men.

[The woman is quieter than man so that only she can hear herself, like the talbiyya. The loudest of her loud and quiet recitation of it is the same, and it is that only that she can hear herself. According to this, she is the same silently and aloud, i.e. the silent is not lower than that which is done with the movement of the tongue, i.e. with how a man recites silently.]

10.10b. Difference from men's prayer

Otherwise they do the prayer in the same way as men except that they should keep their legs together and their arms close to their sides and keep themselves as gathered as possible when sitting and in sujud and in the whole of the prayer in general.

[She is like the man in the prayer except that she keeps her legs together and arms close in. She does this out of fear of breaking wind because she is not like the man in retention. She has a certain looseness. If her legs were apart, she might break wind which would break wudu'. This is also true of ruku' and she does not put her arms out like a man. What the author mentioned is the transmission of Ibn Ziyad from Malik which is contrary to the statement of Ibn al-Qasim in *al-Mudawwana* because he considers the man and woman the same in the form. That which the author mentioned from the transmission of Ibn Ziyad is preferred and the words of Ibn al-Qasim are weak.]

10.11 THE WITR AND *NAFILA* PRAYERS AT NIGHT

10.11a The Shaf'i and Witr

Then you pray the Shaf'i (even) and Witr (odd) outloud.

[After 'Isha', you pray the shaf'i prayer which is two rak'ats. There are positions about whether it a precondition that it have a specific intention or whether any two rak'ats enough. The evident one is the second based on that fact that it is valid that the Prophet said, "The prayer at night s in ones and twos. When one of you fears the approach of Subh prayer, he should pray the one rak'at of the witr to make odd what he prayed". After the two rak'ats, he prays the witr. It is a confirmed sunna in the famous position. It is said that it is obligatory and that it is the most confirmed of the sunnas. It is a stronger sunna than the 'id, and stronger than the Eclipse and Rain prayers The two rak'ats of tawaf are stronger than the witr. As for the funeral prayer, it is less than the witr and more than the 'id. Abdu'l-Baqi demonstrated that the funeral is more confirmed than the witr.

In the best position it is a single rak'at after the shaf'i. The place of its excellence is after the shaf'i. There are two statements about whether the shafi`i is a precondition of completeness or a precondition of validity. The first is taken by the author of *al-Jawhar* and Ibn al-Hajib. Al-Baji clearly stated that it is well-known. The second is that he does a witr without the shafi'i. Ashhab says that he repeats his witr after the shaf'i as long as he has not prayed Subh, i.e. by way of sunna. When we say that the shafi'i must be put first it means its being before it is a precondition of validity. It must be connected to the witr. A small gap is permitted. There are two positions about whether a long gap is permitted.]

10.11b. Night nafila prayers

In the same way it is recommended to do nafila prayers at night outloud whereas nafila prayers during the day should be done to yourself although if you say them outloud during the day it is still acceptable.

[This means it is permitted. Ibn al-Hajib related to statements about it being disliked.]

10.11c. Number of rak'ats for shaf'i

The least number of rak'ats you can do for the shaf'i is two.

[There is no limit to its maximum.]

10.11d. Recitation in the shafi'

It is recommended that you recite the Fatiha and *Sura al-A'la* (87) in the first rak'at and the Fatiha and *Surat al-Kafirun* (109) in the second followed by the tashahhud and the salam.

[After the salam, you stand for the witr. It is recommended that they be separated by a salam based on the previous hadith and the Maliki School.]

10.11e. Recitation in the Witr

You then pray the single rak'at of witr, reciting in it the Fatiha, Surat al-Ikhlas and the two suras of protection. [113 and 114.] If you do more than one pair of rak'ats for the Shaf'i you do the Witr at the end.

[This recitation is recommended. Qadi Ibn al-'Arabi said that the one who strives recites in it the end of his hizb and others recite *Ikhlas*. The accepted position which the author mentioned is based on what Abu Dawud and others related. 'A'isha was asked what the Prophet recited in the witr. She said, "He used to recite *al-A'la* in the first, *al-Kafirun* in the second and *Ikhlas* and the suras of protection in the third. It is clear that this answer does not conform to the literal words of the question because it literally was whether he did the witr with three or something else. So perhaps she understood that the asker meant what the Prophet recited in his witr.]

10.11f. The night prayers of the Prophet

The Messenger of Allah, may Allah bless him and grant him peace, used to pray twelve rak'ats at night making the number odd by praying one rak'at at the end. It is also said that he did twenty rak'ats making the number odd by adding one rak'at at the end.

[There are sound transmissions in the *Sahih*, i.e. from the hadith of 'A'isha and there is no contradiction between the transmission of 12 rak'ats and that of 11 rak'ats because the Prophet used to begin his prayer with two quick rak'ats after wudu' and sometimes they were considered part of his devotions. So sometimes she reported 12 and sometimes did not because they were connected to wudu' and the release of the knot of shaytan, and so she reported ten rak'ats. Standing at night or tahajjud was an obligation in respect of the Prophet and recommended for us since he said, "You should stand at night. It is the habit of the righteous before you and an act of nearness for your Lord and an expiation of evil deeds and prevents wrong actions.]

10.11g. Best Time

The best time for doing night prayers is the last part of the night.

[This is for the sake of tahajjud according to Malik and his followers based on what is in the two *Sahih* collections where the Prophet says, "Our Lord descends every night to the lower heaven when a third of the night remains. He says, 'Is there any who calls on Me so that I can answer him? Who asks of Me so that I can give to him? Who askes My forgiveness so that I can forgive him?" Ash-Shafi'i singled out the middle of the night by the report that the Prophet Da'ud used to sleep half the night and stand in prayer for a third of it and then sleep a sixth. Then it is established that the end of the night is better.]

10.11h Delaying night prayers

For this reason it is better to delay your nafila night prayers and your Witr until the last part of the night. However, if you are someone who does not usually wake up in time you should do your Witr, along with any nafila prayers you want to do, at the beginning of the night

[This is based on what is in Muslim and elsewhere from the marfu' hadith of Jabir: "Anyone who is afraid that he will not get up at the end of the night should do his witr at its beginning. Anyone who intends to get up at the end of night, should do the witr at its end. The prayer at the end of the night is witnessed" i.e the angels of mercy attend it. The upshot is that it is recommended to delay the witr in two cases if it is his custom to wake up at the end of the night or whether he does or does not is equal. It is prayed before in one case. which is when he usually sleeps until Subh.]

10.11i. Prayers after the Witr

and then if you do wake up in the last part of the night you can do whatever nafila prayers you want to in pairs, but you do not repeat the Witr.

[If someone does not usually awake up and does his witr before and his nafila as is best for him, and then he later wakes at the end of the night, he can do whatever nafila he wishes because the fact that he has already done the witr does not keep him from beginning prayers after it. However the place of that is when he has the intention of nafila after the witr or during it, not that it happens before he begins the witr. If he intends to do nafila after the witr before the witr, that is not permitted. Indeed it is disliked. The best is for the nafila to be in pairs of two rak'ats based on the hadith about the night prayer being in twos. Then when he finishes his nafila, he does not repeat the witr since doing it after 'Isha' was valid and it is feared that it is disliked for him to repeat the witr since the Prophet said, "There are not two witrs in the night," as Abu Dawud and at-Tirmidhi transmitted it.]

10.11j. Oversleeping

If you normally pray at the end of the night but oversleep, you can still do your night prayers overlapping the time of Fajr up to when it begins to get light.

[Connected to oversleeping is the one becomes unconscious, insane, or menstruates and then the excuse disappears at dawn. He did not deliberately delay it and so he does not have to pray it, even if he is able to do it with Fajr and Subh before it gets light. He is permitted to do it between dawn and light. The precondition for doing it is that he does not fear that it will get light and that he slept through it by being overcome and that he does not fear missing the group. If he lacks its precondition,

he omits it and prays Subh without the shaf'i and witr because they are done after Fajr without any precondition.

When someone sleeps through his normal prayers until after Fajr, he does the witr because it has two times, ikhtiyari which is after the 'Isha' prayer until dawn, and a daruri time from dawn until he prays Subh according to the well-known position by the one who says that the witr is not prayed after dawn]

10.11k Praying witr late

Then you pray your Witr and do Subh.

[If he prays Subh and omits Fajr, he prays it after the time of the nafila. This is if there is enough time for three rak'ats. If there is only enough time for two rak'ats, he leaves the witr and prays Subh in the well-known position. Opposite it is the statement of Asbagh that he prays the witr as one rak'at and one rak'at of Subh before the sun. If there is only enough time for one rak'at, then Subh is incumbent by agreement. If there is enough time for five or six, he prays the Shaf'i and witr and Subh and omits Fajr. If it is ample enough for seven, he prays all.]

10.11l. Witr after Subh

If you remember that you have not prayed Witr after you have done Subh you do not make it up.

[The like of it is in the *Muwatta*' from a group of Companions. If he forgets the witr and remembers it in the Subh prayer, it is recommended that he step in the famous view if he is alone and then pray the witr and then start the Subh prayer again, i.e. after he repeats the Fajr after the witr. It is even more so if he remembers the witr after the Fajr prayer and before beginning Subh. So he prays the witr and then repeats Fajr. It is the same if he has prayed Fajr and then remembers an obligatory prayer

before Subh, it it is few. Then he repeats Fajr after he has prayed the missed prayer. If he is following an Imam, it is recommended that he continue, even if he is certain that if he stops the prayer and prays the witr, he will catch the excellence of the group. There are two transmissions about the Imam. One is that he stops and the other that he does not. According to the position that he stops, does he appoint a deputy based on an analogy with minor impurity or does he not do so based on analogy of what was mentioned of a prayer in a prayer. According to the statement that he does not appoint a deputy, does the one following stop or not? He appoints and they complete their prayer. This disagreement about stopping or continuing is when the time is ample. If the time is short, he continues without disagreement.]

10.12 ENTERING THE MOSQUE

10.12a. Two rak'ats

If you are in wudu' when you go into a mosque you should not sit down until you have prayed two rak'ats

[When you enter a mosque, it is disliked to sit before praying and this is not eliminated by the fact of sitting. If he enters often, then the first is enough for him if he returns to the mosque soon by custom. Otherwise he should do it again.

These two are a greeting for the mosque which is meritorious and is accepted. Ibn 'Abdu's-Salam said that they are sunna. The basis for this is the words of the Prophet, "When one of you enters the mosque, he should not sit down until he has prayed two rak'ats." (Muslim in the form of a prohibition) Al-Bukhari has it, "When one of you enters the mosque, he should do two rak'ats before he sits, ' by way of command. This command is by way of meritorious action, not by obligation, and the prohibition is dislike and not prohibition.

There is no difference in the command to greet the mosque on the Friday mosque or others except the mosque of Makka. In it he begins with the tawaf when it is demanded of him, even if by recommendation or it is desirable for someone coming from outside to do them first or who does not intend it. If he is Makka and does not have to do tawaf and does not desire it, but he enters it for the prayer or to visit the House and greets it with two rak`ats if it is the time in which the nafila is allowed. Otherwise, he sits like in any other mosque. An exception is also the mosque of the Prophet according to one of two statements of Malik that he begins with the greeting to the Prophet before beginning to bow and the other is that he begins with ruku' and Ibn al-Qasim recommends it and he is relied on because the greeting is the right of Allah and the greeting is a human right and the first is more confirmed.]

10.12b. The time

provided it is at a time when you are allowed to pray.

[A precondition for greeting the mosque is that it is a time in which prayer is permitted. If a prohibited time has begun, like sunrise and sunset, the khutba for Jumu'a, after 'Asr and after Fajr, then it is obligatory that he does not pray in sunrise, sunset and the khutba, and desirable that he not pray after 'Asr and Fajr. If he begins the prayer in a prohibited time, then it is obligatory to stop and it is recommended in a disliked time.

It is recommended for the one who is not permitted to greet because of the prior impediments to say four times, "Glory be to Allah and praise belongs to Allah. There is no god but Allah and Allah is greater" and he performs the greeting with the fard prayer or, which is better, with a sunna or desirable prayer. He obtains the reward if he intends the greeting and the fard.]

10.12c. Fajr taking their place

If you go into the mosque before you have done the two rak'ats of Fajr they take the place of those two rak'ats. If you have already prayed the two rak'ats of Fajr before you go to the mosque, there is a difference of opinion about what you should do. Some people say you pray two rak'ats and some people say you do not.

[In such a case, the two rak'ats of Fajr suffice for the greeting of the mosque and he does not pray the two rak'ats of greeting the mosque before it. That is accepted position. It is also said that he prays them, but that is weak. If you said that time does not demand the greeting and satisfying the thing is a branch of demanding it, I said that this is based on the position that the greeting is demanded at this time. If you pray them at home and then go to the mosque and find that the iqama for the prayer has not been given, there is disagreement about someone who prays the sunna of Fajr outside it. It is said that he prays two rak'ats and some say that the sits down before praying, and that is accepted.]

10.12d. No nafila prayers between dawn and sunrise

Between the break of dawn and sunrise there are no nafila prayers except the two rak'ats of fajr.

[i.e. and the regular prayers of the one who slept through them as was stated, the shaf'i and the witr absolutely, the funeral for the one it is not feared will putrefy, and the prostation of recitaiton are done before brightening, and so doing them in that time is disliked. When you fear the corpse will putrefy, it is no unlawful to pray over him at the time of prohibition and it is not disliked at the disliked time. When he fears that the corpse will putrefy and prays over it at the time of prohibition or dislike, the prayer over him is not repeated when it is permitted, whether he is buried or not. It is like tha in the prohibited time if he is buried. Otherwise it is repeated.

When the sun begins to rise, nafila are forbidden, including the funeral, the prostration of recitation and vowed nafgial to preserve the root until it has fully risen, and the dislike lasts until it has risen the length of a spear from the spears which are measured as 12 spans.]

CHAPTER 11: THE FUNCTION OF THE IMAM

11.1 THE OFFICE OF IMAM

On leading the prayer and judgements concerning the imam and those who pray behind an imam

[This chapter clarifies who is the best person to be the Imam and who it is disliked to have as Imam. When someone prays alone, that takes the place of the group. It also clarifies one who joins alone on the night of rain. The judgement of the one following is that he recites with the Imam when it is silent and he stands at the right of the Imam when he is alone.]

11.1a. The best one to be Imam

The man who should lead a group of people in prayer is the best and most knowledgeable one among them.

[The one who leads them is the one with the greatest virtue, i.e. if a group gather, and all are excellent and one is more so, he is the one who is entitled to be Imam. It is said that the amount of knowledge has to do with the excellence.]

11.1b Women cannot be Imams

Women cannot lead the prayer. This is the case whether the prayer is fard or nafila and whether the group in question are men or women.

[As the woman does not lead the prayer, neither does the hermaphordie. If either of them lead the prayer, the prayer must always be repeated according to the Maliki School whether those following are like them or not. Their own prayers are valid, even if they intend to be the Imams. Abu Ibrahim al-Andalusi disagrees with that and says, "Any woman or a hermaphordite like her who resembles a woman who leads a prayer must repeat it within the time. Know that actual being a male is a precondition for the validity of being an Imam.]

11.1c. Non-Muslims cannot be Imams

[In addition to this precondition, there is another precondition, which is being a Muslim. The Imamate of an unbeliever is not valid.]

11.1d. Imams must be adults

[Also maturity is a precondition and it is not valid for a child to be the Imam of an adult in the obligatory prayer because the child is doing nafila and nafila does not make someone following in a fard prayer valid.]

11.1e. Imams must be sane

[Another precondition is sanity. The imamate of a madman is not valid.]

11.1f. The Imam must know the prayer and be upright

[Another precondition is knowledge. The prayer is not valid except lead by someone with recitation, fiqh, uprightness and the ability to perform the pillar sof the prayer. The one who is ignorant of recitation or fiqh cannot validily lead in prayer someone who has knowledge. As for someone who is illiterate like him, that is valid when there is no one present who can read.]

11.1g. The Imam must have good character

[By good character is meant lack of impiety connected to the prayer. The impiety in the person who is impious towards it is someone who intends to be an Imam through pride and so his imamate is not valid. As for the impiety of the limb, like the fornicator, it is disliked for him to be the Imam but his prayer is valid as opposed to what is followed by the author of *al-Mukhtasar* that it is invalid by such an impious person.]

11.1h. Ability

[Similarly invalid is the imamate of the one who is unable to perform some of the pillars of the prayer which are fard for the one who is able to.]

11.1i. Congruence

[There must be congruence in the one followed, i.e. the person, place and time. Doing dhuhr behind someone doing 'Asr is not valid nor the reverse, nor performing a prayer behind someone making one up or the reverse, nor Dhuhr of Saturday behind Dhuhr of Sunday nor the reverse.]

11.1j. Agreement of *madhhab*

[The agreement of the school of the one following with the Imam in obligatory parts. So it is not valid to follow someone who omits the recitation in the last two or fails to rise from ruku' or prostration, for instance, and residence and freedom in Jumu'a. So the imamate of the traveller is not valid except when he is the khalif. What is meant by a traveller is the one outside of the land of the Jumu'a by a farsang. The Imamate of a slave on Jumu'a is not valid, and the Jumu'a must be repeated if that is possible.]

11.1k Reciting with the Imam

People praying behind an imam should recite to themselves when he recites to himself

[It is related that this means that the judgement of the one following the Imam is that it is recommended for him to recite with the Imam in what the Imam says silently. That is since lack of recitation is a means to thinking and whispering.]

11.1l. When the Imam recites aloud

but should not recite with him when he recites outloud.

[It is disliked to recite when he recites outloud, even if he cannot hear his voice, according to the text. If he recites with him, what he has done is bad, but his prayer is not invalidated. The basis for this is the words of the Almighty, "When the Qur'an is recited, then listen to it and be silent." Al-Bayhaqi reported from Mujahid that the Messenger of Allah was reciting in the prayer and he heard one of the Ansar reciting, and then the words of the Almighty were revealed: down, "When the Qur'an is recited, then listen to it and be silent." They related it from Mujahid from another path that he said it was during the khutba on Fridaya, and another path has the prayer and the khutba.]

11.2 Late-comer making up missed prayer

11.2a. Catching the prayer

If you catch one or more rak'ats of a group prayer then it is as if you have caught the whole prayer.

[If you catch one or more rak'ats of the obligatory prayer or another prayer prescribed in a group like the'Ôids, with the Imam, is judged to

have caught the prayer. The *Muwatta*' has the words of the Prophet, "Whover catches a rak'at of the prayer had caught the prayer," i.e. he is obliged what the is obliged of the Imam in the prostration of forgetfulness. He does not follow anyone else nor repeat his prayer in another group. He says the salam to the Imam and to the one of his left and he obtains a reward similar to the reward of those who were present from its beginning. It is 27 degrees higher. This is when he misses the rest of it by necessity, not from choice. Abu Hanifa says that he obtains the excellence of the group. It is the literal meaning of the words of the author and agrees with its explanation.

What we said indicates catching one rak'at of the ikhtiyari time is in the position of catching all the prayer in negating the sin, even if he delays the ikhtiyari. Also no one said that one who misses part of the prayer with the imam repeats it to obtain the benefits of the group. This is clear in the rest of his words. Catching the rak'at with the Imam" is by placing the hands on the knees , meaning he bows over so that if he wanted to place his hands on his knees, he could certainly do that and the Imam would not rise from ruku' before he placed his hands on his knees.

The judgement of the one who misses a rak'at or more with the Imam is that he did performs what he missed with the Imam.]

11.2b. Making up the missed recitation

You then make up the rak'ats you have missed after the imam has said the salam, making your recitation in them outloud or silent in the way that the imam did.

[What the Imam recited of the Fatiha and the sura, he recites as the Imam recited: what he did silently he does silently and what he did outloud, he does outloud. If he sits in the place, he is permitted to sit, even if he is alone, by catching two rak'ats, then he stands with a takbir. If he sits in a place where it is not permitted do sit, even if alone, by

catching one or three rak'ats wth him, he stands without a takbir. It is the famous position as opposed to Ibn al-Majishun. It is as he thought that the takbir is for moving to a pillar of the prayer. The author of *at-Tiraz* mentioned from Malik in *al-'Utibiyya* the position that if he sits in the second, he stands without a takbir. He said that it is based on the fact that he is making up the two previous ones and that which begins the first is the takbir al-ihram.]

11.2c. Making up other actions

The other aspects of the prayer such as your standing and sitting are done as if you were continuing a prayer you had started by yourself.

[He builds on what he has done. He prays like someone who prays until the end of his prayer and then remembers that he has missed some of the prayer. This has three forms because he either remembers what would invalidate one, two or three rak'ats by omitting prostration, recitation of the Fatiha or something else which would invalidate the prayer.]

11.3 REPEATING THE PRAYER

If you have already done the prayer by yourself you can do it again with a group in order to get the benefit there is in doing that

[If you have prayed the obligatory prayer alone outside one of the three mosques (Makka, Madina and al-Aqsa), where there is no regular Imam and the Iqama was not given while you were in the mosque, it is recommended that you repeat what he prayed in the group, even in the daruri time. The repeating is for the sake of the excellence of the group which is limited by not being outside of the time of the prayer. If it is outside of the time of the prayer, it is not repeated.

The group consists of two and more, and so there is no repeating with one until he is a regular Imam.

If the iqama of the prayer is called while someone is in the mosque, he joins it. The *Mudawwana* states: "If anyone hears the iqama and has already prayed alone, it is not obligatory for him to repeat it unless he wishes, even if he is in a mosque which he has entered with the Imam. The intention of the one who has prayed alone who repeats it in the group is to obtain the excellence reported in that by the Prophet, "The group prayer is 27 degrees better than the pray alone." The prayer which is repeated for the excellence of the group is general in every obligatory prayer.]

11.3b The case of Maghrib

except in the case of Maghrib.

[If he were to repeat it with the Imam, he bows an even number, and does it as nafila. If he does not remember until he has prayed three with him, when the Imam says the salam, he does a fourth after it as nafila. If he does not remember until he has prayed with the Imam, he does not repeat it. It is also said that he does repeat it. He is not asked to repeat Maghrib for the group because if it is repeated, it becomes even. Maghrib is three so that the number of rak'ats of the day and night will be odd. According to the words of the author, he repeats Isha', even if he has done the witr. The well-known position is that it is not repeated if he has done the witr for the joining of the two witrs in the night according to one of two statements by Sahnun that he repeats the witr when he repeats 'Isha'.]

11.3c. Only one group prayer

If you have caught one rak'at or more of a group prayer then you should not do that prayer again with another group.

[i.e it is forbidden for him, even if the second group is greater in number that more excellent and forfearing. It is the well-known position, i.e.

because the excellence for which repeating is prescribed has been obtained, even if the prayer begins with the excellent, and the large group is better. However, this excellence is not prescribed for the sake of repetition. Ibn Habib said, "The excelence of the group is have number and the excellence of the Imam is based on what is stated by the Prophet, "The prayer of a man with another man is better than his prayer alone, and his prayer with two men is better than his prayer with one man, and what is more is more beloved to Allah Almighty," i.e. wherever he is, that is the case. So this would mean whoever prays with a group should repeat it with a better group, or the one who prayed with an imam should repeat it with a better imam. This is not what is meant and it is not what is meant in the hadith. This hadith indicates the encouragement to pray in a group or in large group. Then the author explains what is understood by his words, to make it clearer.]

11.3d. When it is allowed

But if you have only caught the sujud or the tashahhud then you can, if you want, do that prayer again with another group.

[He can choose between two things: either building on his ihram or stopping and joining another group if he hopes to catch it. If he does not hope to catch it, then he completes his prayer and does not stop it. This is in respect of the one who has not prayed before that. As for the one who has prayed before that, and not caught the group prayer except for this amount, he does two, i.e. it is desirable after the salam of the Imam. He does two when the prayer is one after which nafila is permitted, as in at-Tata'i. According to Ibn al-Qasim, he absolutely stops, whether he began the prayer with the intention of the fard or nafila, i.e. after the two raka'ts, and does not complete his prayer.

Opposite that is what Malik related in *al-Mabsut* about his intention when he joined the Imam was to make it Dhuhr with four and his prayer at home nafila, then he must complete it and it is up to Allah to make the

fard whichever of them He wishes. If he does not mean to negate the first, then the first is adequate and he does not have to complete this one.]

11.4 Positions behind an Imam

Then there are six positions regarding someone following the Imam regarding whether he is alone, or other men or women are with him.
11.4a. Two men

If there is just one man with the imam he stands on the imam's right.

[If there is one man or a child who understands the prayer, i.e. grasps that obedience is rewarded and disobedience is punished. Otherwise he is only a child. It is desirable for such a person to stand with the Imam to his right and a little bit behind him so that the Imam can be distinguished from the follower. It is disliked to be level. The fact that his place is to the right is based on what is in the *Sahih* that Ibn 'Abbas said, "I spent the night in the house of my aunt, Maymuna, and the Messenger of Allah rose to pray and I stood at his left and he moved me with his hand behind his back to the right side.

11.4b. Two men or more men

Two men or more stand behind the imam.

[This is based on what is in Muslim where Jabir said, "The Messenger of Allah stood to pray and I went and stood at the left of the Messenger of Allah and he took my hand and brought me round to stand at his right Then Jabir ibn Sakhr came and stood at the left of the Messenger of Allah and he took our hands and pushed us until he had us stand behind him."]

11.4c. Women

If there is a woman there as well she stands behind the men.

[If there a woman, she stands behind the men because of what is in Muslim where Anas said, "When I was an orphan in our house, I prayed behind the Messenger of Allah and Umm Sulaym was behind us."]

11.4d. A man and a woman following the Imam

If there is just one man and a woman praying with the imam, the man stands on the imam's right and the woman stands behind them.

[The man, or the child who understands the act of worship, stands to the right and the woman stands behind them based on what is in Anas where the Messenger of Allah prayed with him and his mother or aunt and he made him stand to his right the woman behind him. The judgement regarding a group of women with the Imam is the same of a man is with one woman with them. That is indicated in the chapter of Jumu'a where he says that the women should be behind the rows of men.]

11.4e. A man and a woman

If a man prays with his wife, she stands behind him.

[Qadi Ibn al-'Arabi says that the clearest in it is that the husband is like the man. Allah Almighty says, "Dwell, you and your wife, in the Garden." She does not stand to his right, meaning it is disliked for to her do that. He should indicate to her to go back but the prayer of neither is invalidated by being level unless there is invalidation by impurity.]

11.4f. A boy and man

A young boy with a man stand side by side behind the imam as long as the boy is sensible enough not to run off and leave the man he is standing with on his own.

[When there is a child and a man, they stand behind the imam based on the previous hadith of Anas, but it is limited by the people of the school to when the boy is sensible and he understands the reward of the one who completes the prayer and the wrong action of the one who stops. If the boy does not understand what was mentioned, the man stands to the right of the Imam and the child is left to stand whereever he wishes.

The judgment of these ranks is that it is recommended. Whoever disagrees with the order and prays otherwise has nothing against him unless that the woman goes forward to the rank of the man or in front of the Imam. It is like a man who goes ahead of the imam–that is disliked without excuse. When a woman goes in front of the Imam, his prayer is not invalidated nor the prayer of anyone with him unless he takes pleasure in looking at her or touching her. The statement that it is invalid by pleasure or looking is weak since there is no touching nor ejaculation. If the one following an Imam goes in front because of an excuse, like the lack of space in the mosque, it is permitted for him without dislike.]

11.5 THE IMAM'S SINGLE PRAYER

11.5a. The Imam's prayer is a group prayer

The prayer of the regular imam when he is alone is considered as a group prayer.

[The regular imam is the one who is appointed by the ruler or his representative or the waqif (trustee) or group of Muslims in any permitted or disliked manner because the precondition of the waqif demands that he be followed, even if he is disliked. It is like that with the ruler or his representative, even if they command something disliked

in one of two positions. It is the same whether the position of the imamate is in an actual mosque or is a judgement, and thus ships are included in it, and any place in which there is normally a group prayer.

On his own he considered to achieve the group prayer in its excellence and judgement. Therefore another group prayer is not repeated and it is not held in that mosque again. Whoever prays alone repeats it with him, but with the precondition that the prayer is within its normal time and people expect it normally, with the intention of the Imam, the adhan and the iqama. He can join prayers alone on the night of rain because the difficulty in respect of it and he says, "Allah hears whoever praises him," and does not add, "Our Lord, praise is yours," i.e. that is disliked.]

11.5b. No two prayers in the mosque

It is disliked for there to be two group prayers for any one prayer in any mosque that has a regular imam.

[Before, after or with the regular imam according to the position of the schoool that it is unlawful for anyone to pray the prayer while the regular Imam is praying it, alone or in a group, because that would lead to mutual hate and dispute between the Imams and the splitting of the community whereas the Shari'a commands harmony.

11.5c If someone has has already prayed he cannot be Imam

Anyone who has already prayed a particular prayer cannot then be the imam for that same prayer for anyone else.

[Anyone who has prayed an obligatory prayer alone or in a group, as Imam or following, cannot lead that prayer which he repeats. It is known from the school that it is not permitted for someone doing a fard prayer to follow someone doing a voluntary one and is repeating that in which he led a group if they wish, which is the approved position of the school,

or individuals. Ibn Habib says "individuals" and it seems that he noted the school of the opponent because the first prayer is allowed by ash-Shafi'i and others. When they repeat it in a group, they become like the one who prayed in a group and then repeated in another group.]

11.6 How to follow the Imam

11.6a. Following the Imam in the sujud of forgetfulness

If the imam leaves out something in his prayer and does the sujud of forgetfulness those behind him follow him even though they themselves have not left anything out.

[It is obligatory that the one following follow him, even if he did it before him. The question has different cases. If he caught all the prayer with him, he is obliged to follow him in every aspect, whether prostration before or after. If he preceded him, then he must either have a rak'at with him or not. If he had a rak'at with him and his prostration is before, then he prostrates with him. If it is after, he does not prostatate with him and waits for him sitting, according to what is in the *Mudawwana*. They said that he is silent and does not say that tashahhud with him. If he differs and prostrates, then his prayer is invalid. If he is ignorant, 'Isa said that he always repeats it. He said in *al-Bayan*, and it is the most comparable on the basis of the school is that it is because he has introduced into the prayer what is not part of it. Ibn al-Qasim has excused it when it is ignorance and says that its judgement is that of forgetfulness to observe the one who says that he ust prostrate with the Imam.

If he does not do a rak'at with him, he does not consequently prostrate afterwards. As for the prostration before, Ibn al-Qasim said that he does not follow him. If he differs and follows him, then his prayer is invalid, whether intentional or by ignorance, not by oversight. The basis is in what ad-Daraqutni reported that the Prophet said, "There is no oversight

against the person following the Imam. If the Imam forgets, then it is against him and whoever follows him." In the two *Sahih* collections is that the Prophet said, "The Imam is made to be followed int he states of the prayer."]

11.6b. Not preceding the Imam

No one should raise their head before the imam nor do any of the actions of the prayer until he has done them.

[None of those following the Imam precedes him in ruku', prostration or anything else. If he gets ahead of him, he returns to him thinking to catch him before rising. Is returning sunna or obligatory? Al-Mawwaq confined himself to the second and even if he fails to return, his prayer is valid since he took his oblgiation with the Imam before he rose. Otherwise, it is obligatory for him to return. If he omits it intentionally or by ignorance, then his prayer is invalid, but not by oversight. It is in the position of the one who is crowded and it is an analogy with the lowering.

Not going down before the Imam is based on what is in the *Sahih* collections that the Prophet said, "Does not the one who raises his head before the Imam fear that Allah will tranform his face into that of a donkey or make his form the form of a donkey?" In the variant of Muslim is that he said, "O people! I am your Imam so do not precede me in bowing, prostration, standing or leaving.

You only do something after he has begun to do it. It is better to do it after he has begun it and to catch him in it. This is outside of the standing up after two rak'ats. In the rak'at, he must not do it until the Imam is already standing. The basis for that is that al-Bara' said, "When the Messenger of Allah said, 'Allah hears whoever praises Him,' none of them moved his back, i.e. stood up until the Messenger of Allah had gone into prostration. Then we went into prostration after him," i.e they

delayed beginning their action from when he began it and they begin their action before he finished his prostration. The commentator of the hadith said, "It is forbidden to precede the Imam and to do it at the same time as him, and it is disliked to delay until he moves on to another pillar of the prayer. It is also said that accompanying him is disliked.]11.6c Beginning the prayer behind the Imam

You begin the prayer after he has begun it,

[The one following begins the prayer with the takbir after the Imam has said it. This is obligatory. This is after he finishes saying the takbir. If he says it before him or at the same time as him, then his prayer is invalid, whether he concludes it before him, with him, or after him. There are six forms of this. If he begins after him and ends before him, it is invalid, and if he ends with him or after him, it is sound. So the forms are nine. The same applies to the salam, although in the case of tahrim, there is no difference between the intentional and the oversight. In the case of the salam, it is confined to the intentional, not to oversight. So his prayer is not invalid by that salam.

Note: When he knows that he has said the tahrim before the imam and wants to say it after him, Malik says that he says the takbir and not the salam because it is as if he has not said the takbir by his disagreement from what he was commanded. Sahnun said that the says the salam because he disagrees about the validity of the first tahrim.]

11.6d. Standing up

stand up after two rak'ats after he has stood up

[i..e it is recommended to stand after the Imam is completely standing.]

11.6e The Salam

and say the salam after he has said the salam.

[This is obligatory. If he says it before him or at the same time, then his prayer is invalid, unless he starts from forgetfulness. Otherwise, he waits until the Imam says the salam and then says the salam after him.]

11.6f. Other actions

As for any other of the actions of the prayer, it is acceptable to do them at the same time as the imam but it is better to do them after him.

[i.e. other than beginning, standing up from two rak'ats, and the salam. These are like going down into ruku', prostration, standing for the second and the fourth. It is permitted to do them at the same time, even though it is disliked, as is shown by the fact that he says, "it is better."]

11.6g. Omissions by the follower

If anything is left out (sahw) by someone praying behind an imam, the responsibility for it is borne by the imam,

[This is like the takbir and the words of the tashahhud or adding a sajda or ruku'. There is no understanding of oversight, and it includes some intentionality, like omitting the takbir or the tashahhud. That is while he is following the imam. If he arrived late and forgets while making up what the missed with the Imam, the Imam is not responsible for it because following has ended and his judgement is that of someone praying alone. Then there are exceptions which he mentioned:]

11.6h. Exceptions

except if it is something like not going into ruku' [Lit. like the rak'at] or sujud or leaving out the "Allahu akbar" that begins the prayer (takbirat al-ihram) or the salam at the end or neglecting to make the intention for that specific prayer.

["Like the rak'at" means all that is obligatory except for the Fatiha, and the author did not ennumerate it. That is because all of these are obligations and the obligations do not fall aside by forgetfulness and are not made up by prostration.]

11.6i. A meritorious actions: the Imam changing his position after the prayer

The imam should not stay in the same place after he has said the salam but should move away

[When the Imam has said the salam for the obligatory prayer, he should not remain where he is, whether the prayer is nafila or not, but should move. It is clear in the words of the author that he moves. What is meant is not that he leaves the mihrab. What is meant is to move to the right or left. Al-Uhjuri said that it is enough that he change his place. Ath-Tha'labi said, "This is the sunna."

There is disagreement about the reason for it. It is said that he only deserves the place for the sake of the pryer. When he finishes, he does not deserve it. It is said that the reason is to avoid confusion for the one who arrives. It is transmitted from ash-Shafi'i that he stays firm a little after the salam based on what is in the Sahih of Muslim that when he said the salam, he only sat for as long as to say, "O Allah, You are the Peace and peace is from You.You are blessed, O You with Majesty and Honour."

Then he makes an exception about the Imam moving his place after the salam:]

11.6j. An exception

except if he is in his own place in which case he can do either.

[This means his house while he is resident or his mount while travelling or if he is in some wasteland. It is permitted for him without dislike because he is safe from what might be feared in that.]

Point: Malik and a group of scholars disliked for the Imams of the mosques and groups to make supplication outloud after the obligatory prayers for those who are present so that combine for this Imam the precedence and honour of him establishing himself as a medium between Allah Almighty and His servants to obtain their best interests through him in supplication. Thus he is on the verge of exalting himself and his heart will be corrupted and he will disobey his Lord in this state more than obeying Him. It is related that one of the Imams asked 'Umar ibn al-Khattab for permission to make supplication for his people after the prayer and he replied, "No, I fear that you will become arrogant until you reach for the Pleaides!"

CHAPTER 12: ON VARIOUS ASPECTS OF THE PRAYER

[This deals with various topics which go beyond the prayer, like the one who is certain about wudu' and uncertain about breaking it, the one who cannot touch water by necessity or does not find anyone to bring it to him who does tayammum.]

12.1 CLOTHING IN THE PRAYER

12.1a Minimum Clothing for a woman

The least amount of clothing in which is acceptable for a woman to do the prayer is a robe which cannot be seen through which is long enough to cover the tops of her feet and a head covering through which the hair cannot be seen.

[Two things are necessary: a robe, and the descriptive words means either thick or enveloping. According to the second, it should be ample so that it covers the tops of the her feet.

The second item is a head covering. It is a garment with which a woman covers her head. Its precondition is the same as the long garment, in that it has to be thick and not transparent. If she prays in something which is lightly woven and transparent, and it is something which shows the *'awra* without thinking, then she always repeats the prayer. If it only defines the *'awra*, it is disliked and she repeats it within the time. The man is like the woman in that. So the woman must cover the top and soles of her feet and her neck and her hair. She is permitted to only show her face and palms in the prayer. The basis for that is the words of the Prophet, "Allah does not accept the prayer of a woman who has reached the age of menstruation except with a head covering" In one variant, "The Messenger of Allah was asked, "Can a woman pray in a robe and

head covering without a waist-wrapper?" He said, "If the robe is ample and covers the tops of her feet."]

12.1b Minimum Clothing for a Man

The least which is acceptable for a man is a single garment,

[Without dislike if it is thick and conceals all his body. If it only covers his private parts, then his prayer is allowed but there is dislike.]

12.1c. What should not be covered

You should not cover your nose or your face in the prayer

[Neither a man nor woman should not cover the face in the prayer. All these things which are prohibited are disliked.]

12.1d. Gathering clothes and tying back hair

nor should you gather up your clothes or tie back your hair especially for it.

[As for gathering up the clothes, it is disliked when it is done specifically for the prayer or because of fear that clothes might get dirty because that contains a form of non-humility. When he is working and the time for the prayer comes while he is like that, he is permitted to pray with what he has on without dislike.

As for tying back the hair, it is disliked if that is in order to keep the hair from becoming dirtied by the earth or he does that for the prayer, i.e. ties his hair for the especially prayer .]

12.2 PROSTRATION ON ACCOUNT OF A MISTAKE

12.2a Adding to the prayer

Any time you inadvertantly add something to the prayer you should do two sajdas after saying the salam and then do the tashahhud and say the salam again.

[This is whenever the Imam, the one on his own or the one following makes a mistake in one of the suras or in what is prescribed for him in the obligatory or nafila prayer, according to what is in the *Mudawwana* as opposed to the one who said that there is no prostration in the nafila. Our evidence is in the words of the Prophet, "There are two prostrations for every forgetfulness." The result is that the nafila is like the obligatory except in five questions, silent and outloud: the sura is overlooked in the nafila rather than the obligatory. The fouth is when he raises his head from ruku', he completes it as a fourth in the nafila as opposed to the fard. The fifth is when he forgets a pillar of the nafila, and a long time has passed or he has begun an obligatory prayer or nafila, and has bowed - he does not have do do anything, as opposed to the fard, which he must repeat.

If you add something, whether outside the words of the prayer, like speaking inadvertantly, or an action of the prayer, like bowing and prostrating, you prostrate for the forgetfulness in the Sunna according to what is in the *Mukhtasar* and in *at-Tiraz* as the obligation of doing it afterwards. at-Tata'i said that.]

12.2b. Only two prostrations

[He does the two prostrations after the salam, even if there is more than one oversight as long as it is not a lot. Otherwise the prayer would be invalid whether it is from other than the words of the prayer, like speech out of forgetfulness and is lengthy. If it is part of the words of the prayer,

there is not prostration for saying it forgetfully, as the prayer is not invalid if it is intentional, as when he repeats the sura or adds a sura at the end of it, unless the words are a fard. Then he would prostrate for forgetfulness. This is like when he repeats the Fatiha out of forgetfulness, even in the same rak'at. There is disagreement about whether the prayer is invalidated by deliberately reciting it. The accepted position is that it is not invalid.

Or he may add something which is not one of the actions of the prayer, as when he forgets that he is praying and eats and drinks. There is disagreement about that and it is said that all of them invalidates the prayer, whether a lot or not. It is said that if it is a lot, it invalidates, and otherwise it does not and is put right by the prostration.

Or it can be one of the actions of the prayer when there is a lot of it in the four rak'ats, like the four actual rak'ats based on what is well-known from Ibn al-Hajib and those who follow him. The rak'at is considered to be rising from ruku'. When he raises his head from the second in four, or the first in three or four in two, then the prayer is invalid. There are two positions about whether it is invalid by half of it. It is said that it is invalid, and it is said that it is not, and that is the accepted position. He prostrates for forgetfulness.

A lot in two is like two rak'ats. It is not invalidated by adding one rak'at in the famous position, like the two of Subh and Jumu'a, based on its being fard in its day. Opposite it is that it is only invalid by adding four rak'ats. It is like the four while travelling. They are not invalid except by adding four rak'ats. A lot in Maghrib is four rak'ats in the approved position that three is like four and its not invalidated except by adding four complete rak'ats.

12.2c. Missing out something

[If you miss something out of the prayer you should do two sajdas before saying the salam after having finished the tashahhud. You then do the tashahhud again and say the salam.

There is the case when the Imam or the one alone or the one following omit something which is a confirmed sunna, or the two minor sunnas, whether it is an actual decrease or uncertain one. The confirmed sunnas are those for which there are prostratations are eight:

1. Omission of recitation of more of the Qur'an than the Fatiha in the fard prayer, and so he prostrates for omitting that in the fard, but not in a nafila.
2. Reciting outloud in the prayers which are outloud, and he prostrates for omitting that in the fard, not the nafila since he can do them silently.
3. Doing it silently in its place. When he recites outloud in the place of the silent, he prostrates before the salam. This is related from the opinion of Ibn al-Qasim, but it is weak. What approved is that it is after the salam.
4. A takbir other than the takbir al-ihram. This is based on all of them being one sunna. As for the statement that each takbir is a sunna, which is what the author of *al-Mukhtasar* says and is stated in *al-Mudawwana* as well, he prostrates for omitting two takbirs.
5. The words, "Allah hears whoever praises Him." It is applies as what is before it does.
6. The first tashahhud and
7. and sitting for it. It is one sunna, and its words are one sunna, and the sitting for it is another sunna, and so it is composed of three sunnas.
8. The final tashahhud.

There is no prostration for other than these eight and the prostration before the salam is after the tashahhud. Then you finish the two prostrations and do the tashahhud a second time in the well-known position and then say the salam. It is preferred by Ibn al-Qasim and he stated that part of the sunna of the salam is that it follows the tashahhud. His words imply that he does not repeat the prayer on the Prophet. That is the case.]

12.2d. Not repeating the tashahhud

Some people say that it is not necessary to repeat the tashahhud.

[That is also related from Malik and 'Abdu'l-Malik preferred it because the method of one sitting does not have the tashahhud repeated in it twice.]

12.2e. Both omitting and adding

If you both leave something out and add something you do the two sajdas before the salam.

[If you leave out some of the confirmed sunnas and add something insignificant which was already clarified, then the prostration is also done before the salam, for instance, if he omits the tashahhud and sitting for it and adds a prostration. What the shaykh mentioned about prostrating only for omission first with the increase after the salam and prostrating only for increase after the salam is the position of Malik. Ash-Shafi'i says that he absolutely prostrates before the salam and Abu Hanifa says absolutely after it. Our evidence for the increase is that it is true that once he prayed 'Asr and said the salam after two rak'ats. Dhu'l-Yadayn stood up and said, "Has the prayer been shortened, Messenger of Allah? Or have you forgotten?" The Messenger of Allah stood up and did the rest of the prayer and then did two prostrations after the salam while sitting,

The evidence for the omission is that it is confirmed that he prayed Dhuhr and stood after the first two rak'ats without sitting. The people stood up with him. When he finished the prayer, people waited for the salam, but he said the takbir while sitting. He did two prostrations before the salam and then said it. Ibn 'Abdu's-Salam said, "Decrease overcomes increase when they are together." The hadith contains an indication of the prescription of the prostration for forgetfulness - it is two prostrations. The taslim done forgetfully does not invalidate the prayer. A slight gap after it does not invalidate it. Words of no use by the Imam and the one following do not invalidate the prayer.

12.2f. Forgetting to do the prostration of forgetfulness before

If you forget to do the two sajdas which should be done after the salam you do them whenever you remember them even if a long time has elapsed.

[The prostration of forgetfulness which are after the salam should be done afterwards, even if it is a long time after the salam of the prayer, even after a month. The prostratation afterwards is to spite shaytan. So it is appropriate that he prostrate, even later.]

12.2g. Forgetting to do the prostration of forgetfulness before

If you forget to do the two sajdas which should be done before the salam

[As for the one before, it mends the omission in the prayer and should be in it or close after it. His words in the *Mudawwana* is that he does it, even if it is in the time which it is forbidden. If he remembers it in a prayer which is not obligatory in the time of prohibition, he delays it until the nafila. It is also clear that it if it is a consequence of the Jumu'a prayer, he does not return to the mosque. The school, according to at-Tadili, is that he returns to the mosque. The literal text of the *Mukhtasar*

is that it is particular to returning to the mosque for the prostration before rather than the one after it. It is the approved position. This is the literal text of the *Mukhtasar* because he says, "in the mosque in the Jumu'a" in the context of the words about the prostration before.

The prostration before must be done in the mosque in which the Jumu'a was performed if he misses the first rak'at of Jumu'a and rises to finish it and forgets the sura and leaves the mosque and a long time has not passed. He returns to the mosque in which he prayed Jumu'a. As for the one afterwards, if when he speaks out of forgetfulness or adds a rak'at by forgetfulness and forgets to prostrate until he has left the mosque, he can prostrate in any mosque.]

12.2h. Doing the two prostrations later

then you do them straight away so long as the prayer is not long over.

[This is when you remember them shortly after finishing the prayer - and this shortness is not defined according to the School. It is the position of Ibn al-Qasim. It is like that with length. One consults custom. Whatever the custom is acted on in in them. According to Ashhab, it is defined by not having left the mosque.]

12.2i. After a long time

If quite some time has elapsed, however, you have to do the prayer again

[If it is a long time, then he repeats the prayer. This is obligatory because it is invalid since it is a result of omitting three sunnas. at-Tata'i says it is like forgetting the middle sitting, or three takbirs. This is if he omitted them by forgetfulness. If he left them deliberately, the prayer is invalid

by simply omitting them according to al-Ujhuri. As-Sanhuri said that it is only invalid by length, even if he omits them deliberately.]

12.2j. Minor omissions

unless what you left out was not particularly critical such as only the sura which should follow the Fatiha or two takbirs or saying the tashahhuds or similar things

[i.e. it consists of two slight sunnas like being silent or outloud, i.e. he prostrates for them, but when he omits that and a long time passes, his prayer is not invalid. This is when he comes to undertake it. Otherwise, it is invalid in this case becuse he omitted three sunnas. It is said that it is not invalid. If he does not do the standing for it. The words of al-Jazuli are useful in preferring the first. It is agreed that it is invalid since he left a sura in more than one rak'at. When the author says, "only the sura which should follow the Fatiha", even after the Fatiha, it is clearer so that it will not be imagined that the Fatiha is also omitted. "Similar things" are like the two praises. This is permitted as a mercy from Allah in the prevailing position, based on the fact that the specific expression is desirable. If he omits the two tashahhuds and sits for them because in that case his prostration is oly for two slight sunnas.

12.2k. When nothing is obliged

in which case you need not do anything.

[i.e. he does not have to repeat the prayer nor prostrate, i.e. even after a period of time, since it is the subject of the question of the author. It is known that the two slight sunnas are prostated for, but when a long time has passed, and he does not prostrate, he is not asked to prostrate or to repeat the prayer since it is for two slight sunnas. I know from what preceded that the prostration is prescribed to mend the gaps which occur in the prayer as if there is an extra ruku' or prostration through

forgetfulness, or the omission of ruku' or prostration by forgetfulness, he repairs that omission before the salam. If he omits a confirmed sunna or two slight sunnas, he must prostration accroding to its circumstances, before or after to repair those gaps. There are gaps which occur in the prayer which are not mended by prostration, i.e. the prostration does not replace them - this is when he omits a pillar of the prayer.'

12.2l. When they are not sufficient

The two sajdas of forgetfulness are not sufficient to make up for missing out one full rak'at or sujud or failing to recite the Fatiha in two rak'ats of any prayer (or, in case of subh, one rak'at).

[i.e. a full rak'at which he is certain that he omitted or is unsure of it during his tashahhud and before his salam. Then he must perform that rak'at. The manner in which he does is that he does it, building on the preceding rak'ats, even if that rak'at, is one of two, and he prostrates after that for the one before the salam because of moving one of the rak'ats since he is Imam or alone. If it is not one of two, then he prostrates after the salam after he does the rak'at for the increase, not the decrease.

If he omits a prostration or ruku' or rising from them and remembers that while he is standing, for instance, or doing the final tashahhud when he realises his omission or is unsure about it, and it is not possible to satisfy the fard in its place, then he does the unsure substitution and prostrates before the salam because the obligation in prostration is before. What is meant by doubt is hesitation and so it includes supposition, doubt, and uncertainty. This is in respect of obligations because doubt in decrease in them is like realising it in the obligation of bringing the unsure substitute as opposed to the sunnas. He does not prostrate for omitting them except when he is certain of missing them or it is equally balanced in his mind whether he did it or note.

In cases of failing to recite, he mentions that if someone misses out an obligation or pillar, he performs it, and what he mentioned of lack of mending by prostration for missing out a rak'at or prostration is agreed upon. What he mentioned of lack of mending by prostration for omitting the recitation of the Fatiha in the entire prayer is the position of the majority, and it is preferred. Opposite it is what al-Waqidi related from Malik that when recitation is omitted in the entire prayer, his prayer is allowed.

Al-Fakhani said that there are three positions about omitting recitation in half of the prayer, like one rak'at of a two rak'at prayer and two of a four rak'at prayer. The best known is that he continues and prostates before the salam and it is desirable that he repeat his prayer in order to be careful. The second is that he prostrates before the salam and it is enough for him. The third is that what he omitted of the recitation nullifies and he does the like of it and prostrates after the salam. This is what happens in the accepted position that it is obligatory in every rak'at. So it is accepted. Having claririfed this point, he moves on to its minimum omission:

12.2m. Missing the Fatiha in one rak'at

There is a difference of opinion about what you should do if you miss out the Fatiha in one rak'at in any prayer apart from Subh. Some people say that you only have to do the two sajdas before the salam; others say that the whole rak'at is invalidated and that you must do another rak'at to make up for it; yet others say that you do the two sajdas before the salam without doing another rak'at but then repeat the whole prayer to make sure of being correct.

[This is like one rak'at of a three or four rak'at prayer. There are three positions, all of which are in the *Mudawwana*. One is that the forgetfulness in recitation is satisfied by the prostration as long as it is not Subh. It does not invalidate it and satisfies it. 'Abdu'l-Malik preferred

this position based on the fact that it is fard in the majority or based on the fact that it is not obligation or that it is oblgiatory in one or half of the rak'ats.

The second is that the rak'at from which the Fatiha was omitted is invalid and he must do another rak'at to replace it. Ibn al-Qasim prefers this statement. This necessitates that it is obligatory in every rak'at. It is the approved statement. Ibn al-Hajib says that it is sound. Ibn Shas said that it is the famous transmission.

The third is two prostrations and no rak'at, but the prayer is repeated to be follow the one who says that it is obligatory in every rak'at. The third transmission is derived from the first. The author states that completing the first is obligatory and repeating the second is recommended for care, and it is only recommended.]

12.2n. The best judgement

This last judgement is the best if Allah wills.

[This is because it complies with the other two positions. His prostration before the salam and the prayer is not invalid, compiling with the position that it is obligatory in the majority, for instance, and repeating the prayer compiles with the second.

Two points from al-Fakhani: The first is that the shaykh does not mention the judgement of when he omits recitation from most of the prayer, say three out of four or two of out Maghrib. There are two positions in that. The best known is that he prostrates before the salam and repeats the prayer out of caution, i.e. it is recommended. In short, it is that if he omits most and half it is not invalid and he prostrates before the salam and repeats the prayer out of caution.

The second is the place of the prior dispute. All of it is about omitting recitation of the Fatiha when he misses the place where it is done. If he does not miss it in that he remembers before he raises his head from the ruku' he returns to his recitation.

There are two positions about repeating the sura. Al-Lakhmi recommends that it he be repeated, and it is the well-known position, as in *at-Tawdih*, either since it is sunna after the Fatiha or since it is sunna that it is only done after the Fatiha. It is apparent that the second statement, which is that it is not repeated, is not seen by Malik in the collections. He thought that the sunna was obtained by reciting it either before or after the Fatiha. Allah know best. Based on what al-Lakhmi preferred of repeating it, Sahnun said that he prostrates after the salam, i.e. for that increase in words. Ibn Habib says that he does not have to prostrate for it, i.e. he does not think a prostration is entailed for that increase in words. This is the predominant position. The author of *at-Tawdih* said that Ibn Habib's statement is sounder because there is no prostration for additional recitation by evidence, even if he recites two suras or recites a sura in the last two, as it says in *at-Tahqiq*.]

12.2o. No prostration for omission of a slight sunna or meritorious action

If you forget to say one takbir or to say 'sami'a-llahu liman hamidah' once or to do the qunut you do not have to do the sajdas of forgetfulness.

[Except forof the takbir al-ihram. As for not prostrating for one takbir, that is well-known. On that basis, if he prostrates for it before the salam, his prayer is invalid, unless he is following someone who believes that there is prostration for omitting that. Then his prayer is not invalid as it is not invalid if he omits the prostration after it. Ibn al-Qasim said that he prostrates for it, and what he mentioned of not prostrating for omitting

the one praise is the School. There is no prostration for omitting the qunut. If he prostrates for it before the salam, his prayer is invalid.]

12.2p. Remembering omissions after finishing the prayer

If you finish the prayer and then remember that you left out part of it, you should go back to it straightaway by saying a new takbir al-ihram - provided that very little time has passed since you finished it

[This is if you finish with the salam, believing you have done the prayer in full, forgetting that you have omitted something. This is not incompatible with saying the salam intentionally. If he says the salam forgetting that he is in the prayer or that he is speaking the salam, then he is in the position of the one who did not say the salam, and so he catches what he omitted. If he finishes and then remembers with certainty or doubt, and what is meant is by uncertainty is supposition, doubt, or suspicion, and he remembers that he owes one of the obligatory pillars of the prayer like the ruku', prostration or sitting according to the salam. If he says the salam forgetting when rising from prostration, he sits for the amount of the salam and says the salam, and then goes back, i.e. intends to complete it if it is close to the time where he left. At-Tata'i said that literal position of the school demands that he prays where he is immediately. If he does not do so and prays in another place, his prayer is invalid.

When he resumes and intends to complete the prayer, he says the takbir al-Ihram, with his intention to resume accompanying the takbir. His outward words, "very little time has passed" is the transmission of Ibn al-Qasim from Malik. This is the accepted position. Opposite is that it is that if very little time has passed, he does not say the tahrim. The difference is about the takbir. There is agreement about the intention. When we said that he resumes with the tahrim, if he remembers while he is sitting, he says the tahrim as he is and does not have to stand. This is when he has left the prayer from the place of sitting. If he has left it in

another place, like ending after praying one rak'at or three, except for Maghrib, he returns to rising from prostration and says that tahrim for it and does not sit. If he remembers while he is standing, there are two statements about his tahrim. In short, the early companions of Malik believed that he says the tahrim from standing because of because of immediacy. On that basis, there are two positions on whether he sits afterwards and then rise or not. Ibn Shiblun believed that he sits because it was the state in which he left the prayer. That is the accepted position. He does not say the takbir for that sittting. He sits without a takbir. When he sits, he says the takbir for ihram, and then he stands with the takbir which is done by the one who leaves the prayer after two. The place is that he sits is for ihram when he says the salam after two. As for the one who says the salam for one or three, he returns to the state of his rising from prostration and says the tahrim and does not sit since that is the place of his sitting. It is desirable for him to raise his hands when the takbir is said.

12.2q. Doing what was missed out

and then do whatever it was that you missed out.

[After the takbir al-ihram, he prays the rest of the prayer when he says the salam with certainly that his prayer was complete. If he said it either knowing that his prayer was not complete or being unsure whether it is clear that it was complete or incomplete, then the prayer is invalid. You know what happens if you remember after you said the salam. When you remember it before the salam, and it is in the last rak'at, he is either in ruku' or not. If he is in ruku' he does it standing. If he has come up from ruku', he does it fixed. If it is in prostration, he does from a sitting position, or from two, then he does them from standing. If he does them from sitting out of forgetfulness then he prostrates before the salam because of the lack of going down for them which is not obligatory. Otherwise, it would not be mended by the prostration of forgetfulness. It is disliked to do that deliberately as Zarruq said.

If what is omitted is not in the last, he does it as we stated when it is in the last in sitting or standing or bending and he has not completed the rak'at after the rak'at which has an omission, when he finishes it, he has misses it and puts what he has done in its place when he is alone or an Imam. What we mentioned is that he does the omitted obligation if he can catch it. If what was omitted was the intention and the takbir al-ihram, they cannot be caught because if they are forgotten, there is no prayer. If he forgets one of them, he starts the prayer from its beginning. Know that the unsure omission is like the definite one, What is meant by doubt is hesitation. As for in the sunnas, he only considers certain omission or where the doubt is equally balanced, not suspicion.]

12.2r. After a long lapse of time

If, however, a long time has elapsed or you have left the mosque, you must begin the whole prayer again.

[If you rememeber after a long time has passes after finishing the prayer, which is defined by custom according to Malik and Ibn al-Qasim or you leave the mosque according to Ashhab, you must begin again because one of the preconditions of the prayer is that all of it is at the same time.]

12.2s. Forgetting the salam

That is also the case if someone forgets the salam.

[He returns to sitting if it is soon and says the takbir al-ihram while seated and says the tashahhud. He brings the salam and prostrates after the salam, even if that is has been a long time or he has left the mosque where he began his prayer and his place. He says the takbir al-ihram while seated and the tashahhud and brings the salam when he remembers the salam after leaving the place. If he remembers it soon while he is sitting facing qibla, he says the salam where he is and does not need a takbir by which he says the ihram and he does

not say a tashahhud. If he turns from it, they prayer is not invalidated if he faces it and says the salam He does not owe the takbir al-ihram, or the tashahhud and he must prostrate after the salam for forgetfulness.]

12.2t. Uncertainty about the number of rak'ats

If you do not know whether you have prayed three or four rak'ats you build on what you are certain of, repeating anything you are unsure about, in this case praying another rak'at to make sure of having prayed four. You then do the sajdas of forgetfulness after the salam.

[He prays until he is uncertain. So if he is certain about three, and unsure about the fourth, complete discharge of responsibility is only obtained by four. That is what the author means, "He repeats anything he is unsure about". He prostrates after the salam in the famous position. Ibn Lubaba said that he prostrates before the salam, and it is the literal interpretation of what is in the *Muwatta*' and Muslim where the Prophet said, "When one you is unsure about his prayer and does not know whether he has prayed three or four, he should remove the doubt and build on what he is certain about and then do two prostrations before the salam."]

12.2u. Speaking inadvertantly in the prayer

If you speak during the prayer inadvertantly, you also do the sajdas of forgetfulness after the salam.

[This is if the Imam or the individual speaks a little in the prayer, forgetting he is in the prayer or that he is speaking. If he speaks deliberately, his prayer is invalid unless it has no purpose and so it is not invalid unless it is a lot in himself. A lot is known by custom. Then he prostrates after the salam because it is increase and is mended by the

prostration. Forgetfulness excludes the intentional, ignorant and the one forced, and the one who is obliged to speak to rescue a blind person, for instance. Their prayer is invalid.]

12.2v. Uncertainty about having said the salam

If you are not sure whether you said the salam or not, you say it and do not do any sajdas of forgetfulness.

[He does not rise from his place. If it is near the tashahhud, and does not prostrate for forgetfulness because he said the salam, and his prayer is complete. The second salam occurs outside the prayer and so there is no reason for prostration. If he did not say the salam, he says it now, and no forgetfulness occurs from him for which he prostrates. When it is near, but he has moved from his place, i.e. has not turned from qibla, he says the takbir again, the tashahhud and the salam and prostrates after the salam because of the increase. If he has not moved but turned from qibla, he faces it and says the salam and does not do the tashahhud or tahrim and prostrates after the salam.]

12.3 CONSTANT DOUBTS

12.3a The case of someone subject to constant doubts

Anyone who finds themselves thinking all the time that they have made a mistake in the prayer should pay no attention to their doubts.

[If this happens, it is obligatory to ignore it and he should rely on what he feels in himself about that because it is a test from Shaytan. When it has power over the heart, no action ever succeeds with it and so the useful remedy for this disease which brings about confusion is to turn away and the most beneficial remedy is to remember Allah: "As for those who are godfearing, when they are bothered by visitors from

Shaytan, they remember. " (7:201) When he says to him, for instance, "You have only prayed three," so he says, "I have only prayed four and my prayer is sound."]

12.3b. What he does

They do not have to do anything in reparation but they should do the two sajdas after the salam.

[If he repairs and builds on what he is certain about, his prayer is not invalid as al-Khattabi said. Perhaps his reason is that the basis is building on certainty. He ignores the person with constant doubts to make things easier for him. According to Ibn al-Qasim, it is recommended that he prostrate after the salam because is more like an addition if someone is like this since when he is unsure about whether he prayed three or four, he might well pray five.]

12.3c General position about people with doubts

This refers to people who find this happening a lot and who are continually in doubt about whether they have added something to the prayer or left something out and never feel certain that they have prayed correctly.

[i.e. doubt occurs very frequently, and he is always unsure about whether he omitted or forgot. The end of the excuse in it is that he does not have to prostrate by way of the sunna. This does not contradict the fact that it is recommended for him to prostrate.

Know that a lot is considered to be when this occurs to him in every prayer or every wudu', or once to twice every day, or when it comes one day and stops, or two days and then stops in the third. That is the person with frequent doubt. If it comes two days and then stops on the third, that is not someone with continual doubt, as when it comes to him one

day about wudu' and one day about the prayer: he is not someone with continual doubt because the doubt about the means, like wudu' does not include doubt about aims, like the prayer.]

12.3d. What such people do

They should only do the two sajdas after the salam. On the other hand if they are certain that they have made a mistake they should make the appropriate reparation and do the sajdas of forgetfulness.

[He only has to prostrate after the salam only. However, if someone is certain that he is omitted something which would invalidate a rak'at, i.e. he is certain that he had forgotten a prostration or ruku' and failed to catch it, as when he remembers while he is in the final tashahhud, for instance, he does a rak'at in place of that which was corrupted and then he prostrates. If the rak'at in which he forgot is one of the first two, he prostrates before the salam, because he has both increase and decrease. The increase is the rak'at which he nullified and sitting in other than its proper place. the decrease is by omitting the sura because he brings a dubious rak'at by building, i.e, with the Fatiha only. If it is one of the last two, he only has increase and so he prostrates after the salam.]

12.3e. Always making the same mistake

If someone is always making a particular mistake in the prayer and this happens a lot, he should make the appropriate reparation but not do the sajdas of forgetfulness.

[If he often forgets something, as when it becomes his habit to always forget the first sitting, or to forget the prostration, he puts it right. The reparation of that has two aspects: one is that he missed the place of catching it and the second that he did not. The example of the first is the one is someone who habitually forgets the second prostration of the second rak'at, for instance, without it being a two rak'at prayer and he

only remembers after the salam or after starting the third. He does a rak'at in the first and does not prostrate and the third becomes the second and he does not prostrate. The example of the second is when he remembers in the fard before he starts the third. These two aspects are included under "appropriate reparation". He does not prostrate for his forgetfulness.]

12.3f. Standing up directly after prostration

If you begin to stand up directly from sujud at the end of two rak'ats you should sit back down again as long as your hands and knees have not left the ground.

[Meaning you move to rise. We do not take it literally so that it does not contradict with his words "after he goes back" because it literally means that he does not stand up after two of the obligatory prayer, omitting the sitting and whoever obliges that he omits the tashahhud. When he sits and stands up forgetting the tashahhud, he does not go back nor prostrate for it. It is agreed about when his hands and knees have not left the ground, so it applies even more if only his hands or knees have left the ground. Then he does the tashahhud and completes the prayer and does not have to prostrate because of the insignificance of that. If he continues to stand up deliberately, his prayer is invalid in the well-known position because he omitted three sunnas deliberately. If he continues out of forgetfulness, he prostrates before the salam.]

12.3g. What is done in this case

If they have you should continue on up and not go back down and then do the sajdas of forgetfulness before the salam.

[If his hands and knees have left the ground, he continues. If the time of omission has been a long time and he has not prostrated, his prayer is invalid. This is true in two cases: one is when he leaves the earth with

his hands and knees without standing up straight and then remembers after he has left the earth. The second is that he has left the earth and stood up straight. The judgement in it is the same: he continues and does not go back and then he prostrates before the salam. However if he differs and returns to sitting in the first instance deliberately, forgetfully or by ignorance, his prayer is not invalid and he prostrates after the salam for the addition.

In the second case, if he deliberately returns to sitting, the Tawdih states that is well-known that it is sound, and he prostrates for it after the salam for the addition. If he returns by ignorance, Sahnun is reported in *an-Nawadir* as saying that his prayer is invalid. Ibn al-Qasim related that he continues his prayer and then prostrates. If he goes back, he does not rise until he does the tashahhud .

If he abandoned the tashahhud deliberately after returning, then his prayer is invalid according to Ibn al-Qasim, but not of Ashhab. Perhaps the words of Ibn al-Qasim is based on its being invalid by deliberately abandoning a sunna which differs from from Ashhab. It is like that in some commentaries on Khalil. If he goes back inadvertantly, there is agreement that his prayer is not invalid. He prostrates after the salam.]

12.4 MISSING A PRAYER

12.4a. Missing a prayer

If you have missed a prayer you should do it as soon as you remember in the same way that you would have done it if you have done it at its right time.

[If you remember a prayer which you forgot, or slept through or deliberately omitted in the well-known position of the School, you must make it up without any disagreement in the case of the forgotten prayer, and the recognised position of the School in the case of the the

deliberately omitted prayer. The basis for that is what Muslim related that Prophet said, "If anyone forgets a prayer or sleeps through it, its expiation is that he pray it when he remembers it."

When you remember is whether it is in night or day at the sunrise and sunset, i.e. whenever you are certain or think that you have omitted it. As for when you are unsure, and things are equally balanced, it must be made up, but you avoid those times of the prohibition, as is obligatory in the forbidden times and desirable to forbid the disliked times. As for a suspicion of omission or logical possibility, it is neither obliged nor desirable to make it up in such cases. It is clear from the words of the author that it is obligatory to make up missed prayers immediately, and it is not permitted to delay except for an excuse.

He does the number of ruku' and prostration and its forms - silent or aloud and does the qunut if it is Subh and does the iqama for every prayer. If he forgets it on a journey, he makes it up as on a journey. If he forgets it while resident, he makes it up as resident. He the time of making it up and missing it differ in respect of health or illness, he takes account of the time when he is making them up. If he misses it while healthy and is ill when he makes it up and can only make the intention or indicate with gesture, he makes it up with intention or gesture and does not defer it because he might die. If this is adequate in performing the prayer, it is even more proper that it be adequate when making up a prayer.]

12.4b. Repeating prayers done after the missed prayer

If you have already done the prayer of the time you are in you should do it again after making up the prayer you missed.

[Then after making up the missed prayers, you repeat the current prayer when it is within its time. This applies equally to the Imam, the one praying alone, and one following. It is desirable for each of them to do it

if he remembers a small number of missed prayers - four or five - after he has prayed the current prayer and there still remains enough time to repeat the current prayer after making up what he forgot of a small number of missed prayers. The example of that is if he forgets Maghrib of the day before, for instance, and remembers it after he has prayed Subh the following day and before the sun rises. He prays Maghrib and repeats Subh, but does not repeat 'Isha' since its time has gone. If he remembers Maghrib after sunrise, he does it and does not repeat anything at all.

If he has prayed the current one and then remembers several missed prayers, six or five, he does not repeat the present prayer after he makes up what he missed.]

12.4c. If there are a lot of prayers to make up

If you have a lot of prayers to make up you can do them at any time of the day or night, including sunrise and sunset, according to what is convenient in your particular situation.

[If he has forgotten them, or slept through them, or intentionally left them, he makes them up at any time of the day or night, even at sunset and sunset. He first spoke about a few prayers and here about many, and repeats his words about sunset and sunrise to indicate Abu Hanifa who says that only Subh of the day can be prayed at sunrise and at sunset only 'Asr of the day. His evidence is the previous hadith. However he indicates that hardship is removed when they are made up without laxness. Then he indicates the second part:]

12.4d. Less than five prayers to make up

If the number of prayers you have to make up is less than five you should do them before doing the prayer of the time you are in even if that means going over the time of that prayer.

[If the number of prayers is less than the prayers of a 24 hour day, then he is obliged to do them before the present prayer. Included in this is the one who owes Dhuhr and 'Asr, or Maghrib and 'Isha', and only has enough time for the last. Nevertheless he must do the first. If he does the present prayer first, then it is valid although it is a wrong action to do it intentionally rather than out of forgetfulness, and he does not have to repeat when the time has gone. Thus he does the missed prayers even if that entails missing the current prayer. This is the well-known position. Ibn Wahb said that he begins with the current prayer.]

12.4e. Several missed prayers

If the numbers of prayers you have to make up is greater than this and you are afraid that if you do them you will not be able to do the prayer of the time you are in in its time, you should pray that prayer first.

[Then he begins to clarify the judgement of the order of several missed prayers with the current prayer. It is if he misses, according to what the shaykh says, five or more, or according what al-Maziri states, six or more. It is understood from his words that when he does not fear missing the current prayer, he begins with the omitted ones. This is the position of Ibn Habib. The accepted is what Ibn al-Qasim related that he begins absolutely with the current prayer, whether the time is narrow or wide, but it is obligatory when the time is short and recommended when it is wide. Then he moves to speak on the third category.]

12.4f. Remembering a missed prayer while praying

If, while you are doing a prayer, you remember having missed a previous prayer, the prayer you are doing becomes invalid.

[If he remembers a few prayers, which are those which must be in order with the current prayer while doing an obligatory prayer, then the prayer

becomes invalid and so he must stop it. It is not actually that it is invalid. Ibn Naji says that it means that it is obligatory to stop the prayer. This statement is the literal position of the school as he said in at-Tawdih. It is said that it is recommended. The famous position is what is in *al-Mudawanna* that he continues with the Imam and repeats it, and there is disagreement about the obligation to repeat the prayer, i.e. based on the fact the order between a few prayers and several ones is an obligation of the precondition. It is well-known in *al-Mukhtasar* that he repeats it in the time, i.e. it is not obligatory to repeat it in the time, but it is recommended.

In short, when the Imam or the one praying alone remembers a few missed prayers before performing one rak'at with its prostrations, he must stop. It is also said that it is desirable. If he has performed one rak'at with its prostrations, it is recommended that he make it double. It is said that it is obligatory. The one following follows his Imam in that. There is no difference between four and two, like Subh, Jumu'a, and the shortened prayer. The literal meaning of the *Mudawwana* is that Maghrib is like the others and he makes it double if he has done one rak'at. This is not relied on. Rather he completes Maghrib. That is what Ibn 'Arafa prefers. If he remembers it after completing two full rak'ats of Maghrib with their prostration, he completes it with the intention of the obligation. If the one following remembers a few missed prayers, he continues with his Imam. Then it is desirable for him to repeat it within the time. There is no difference whether the repeated prayer is a Jumu'a or other and he repeates it as Jumu'a is possible. Otherwise it is Dhuhr.]

12.5 INVALIDATION OF THE PRAYER IN CERTAIN CASES

12.5a Laughing

If you laugh while doing a prayer you have to repeat the prayer

[This is laughing with sound. It is obligatory to repeat the prayer because it is invalid by agreement if it is deliberate, whether it be the Imam, person following or individual. According to the well-known position, it is the same if it is inadvertant or from being overcome. Opposite it is the position that it does not impair it, based on analogy with speech. Ibn Naji said that the literal meaning of his words would be even if he laughs silently at what Allah promises the believers as when he reads an ayat which describes the people of the Garden and laughs out of happiness.

Based on the well-known position about the inadvertant and being overcome, the Imam should delegate someone and then become a follower and then it is obligatory to repeat it after that within the time. What is meant inadvertance forgetfulness, as when he forgets that he is doing the prayer.]

12.5b. Laughing does not break wudu'

but you do not have to do wudu' again.

[This differs from Abu Hanifa who says that laughing breaks wudu' as it invalidates the prayer except in the funeral prayer where it only invalidates the prayer. The one following is different from the one alone and the Imam in such a case.]

12.5c. If you laugh behind an Imam

If this happens when you are praying behind an imam you complete the prayer with him but then do it again afterwards.

[If someone laughs in a prayer behind an Imam, it is recommended that he continue to observe the prayer. It is said that it is obligatory, and the one who follows continues limited by the first so he cannot leave while laughing, but is overcome. It is the same if he does it by forgetfulness. If

he is able to leave, he does not continue. The second is that he did not laugh intentionally. Otherwise he does not continue in being overcome and forgetfulness afterwards. The third is that he does not fear by continuing that the will miss the time. Otherwise he stops. The fourth is that the laughter of those following, all or some, does not oblige that it continue. Otherwise, he stops, even if he suspects that. The fifth is that he it is not Jumu'a Otherwise he stops, even if the time is ample.]

12.5d. Smiling

If you merely smile no reparation is necessary.

[If anyone praying only smiles while praying, he does not have to prostrate for forgetfulness nor does the prayer become invalid when it is intention or done through ignorance, although it is disliked to do it intentionally. If it is a lot, then the prayer is invalidated, even if it is due to forgetfulness because the smile is the movement of the lips and so it is like the movements of eyelids or feet.]

12.5e. Blowing

Blowing in the prayer incurs the same judgement as talking - if it is intentional it invalidates your prayer.

[It invalidates it if it is deliberate and done by ignorance, but does not when it is by a slight forgetfulness, and he prostrates after the salam. It is not a precondition for the invalidation on account of blowing that two letters appear from him nor one letter. It is clear from that what is meant is blowing with the mouth. When it is done with the nose, it does not invalidate the prayer, even if intentionally, and there is no prostration for its forgtfulness. The evidence for invalidation is what is related from Ibn 'Abbas who said that blowing in the prayer is speech, and so it invalidates it.

It is agreed that clearing the throat out of necessity does not invalidate the prayer nor is there prostration for it. There are two positions about when it is not necessary by Malik, which distinguish between the intentional and forgetful. The other statemeent is that it absolutely does not invalidate it. Ibn al-Qasim takes that position and al-Ujhuri and al-Lakhmi prefer it since it is insignificant.

The school is that the sigh on account of illness does not invalidate the prayer, even though it is one of the sounds which are connected to speech because it is the place of necessity. Bahram and at-Tata'i said that. It is like that with weeping. When it is not accompanied with sound, it does not invalidate when it is used to humility, i.e. it is a precondition that he be overcome. In short, what is connected to weeping is when it is without sound that it does not invalidate, whether it is by choice or being overcome by humility or not unless there is a lot of volition in it. That which is has sound invalidates, whether it is by humility or affliction if it is by choice.]

12.5f. Mistake about qibla

If you make a mistake regarding the direction of qibla you should do the prayer again if there is still time.

[These refers to any of the people of ijtihad with evidence of the direction of the Ka'ba. It includes the one who imitates someone else of good reputation and knowledge, or a mihrab when he is outside of Makka or Madina and strives in the direction which he thinks is it since he has tokens of it. So he prays in that direction and then it becomes clear to him after he has finishes the prayer that he was wrong about the direction of qibla, so that he had his back to qibla or deviated a lot from it. It is always recommended that he repeat the prayer within the ikhtiyari time. If he prays without striving, then must repeat the prayer even if he gets it right.]

12.5g. If there is impurity on clothes or the place

The same applies if you do the prayer in clothes with some impurity on them or pray in an impure place.

[Or if there is impurity on the body and you then remember that impurity after finishing the prayer, then the prayer is repeated in the time. The time for Dhuhr is until yellowing and for Maghrib and 'Isha' it is the entire night.]

12.5g. Wudu' with unacceptable water

The same also applies if you have done wudu' with water whose colour, taste, or smell has definitely changed, you must do the prayer again however much time has elapsed and of course repeat your wudu'.

[If he does this out of forgetfulness with impure water, which is that which has changed, as a small amount of water into which something impure has fallen and not changed and he does not remember until he has finished his prayer. If he remembers it during the prayer, then it is invalid simply by remembering it. The recommendation is dependent on remembering it. His words are based on his school, which is that a little matter in which impurity has fallen and has not changed is impure. The accepted position is that it is not impure. On that basis, he does not have to repeat it at all.]

12.6 JOINING PRAYERS

12.6a. Joining Maghrib and 'Isha'

You are allowed to join Maghrib and 'Isha when there is heavy rain and also if the night is muddy and very dark.

[What he mentioned about joining on a rainy night is an indulgence upon which the author of the *Mukhtasar* proceeds, and does not make its judgement clear. Is it allowable, which is the literal meaning of their words, but not the most appropriate whih is the occurence of the prayer in its time?

Linguistically allowance is to make easy. In the Shari'a it is to permit something forbidden when a preventative reason exists, i.e. if it were not for the existence of that difficulty, and the preventative reason here is that it can be done in its time. Part of what the author mentioned as a reason for joining is well-known, and it is rain. Rain is a reason for joining Maghrib and 'Isha' according to the famous position provided that it is a lot of rain. It is that which causes average people to cover their heads, whether it falls or is about to fall which is known by the conditions. Snow and cold are similar to rain.

It is agreed that another reason for joining is mud and darkness. What is meant is thick mud and darkness means a night without moon. If the clouds cover the moon, then it is not darkness, and the prayers are not joined for that. It is evident from the words of the author that the prayers are not joined for darkness alone nor for mud alone. That is the case. The people of the school agree that the prayers are not joined for darkness alone. As for mud, al-Qarafi states that the well-known position that they are not joined. To summarise, his position is that the allowance between Maghrib and 'Isha' is that only these two prayers can be joined. That is indeed the case. Ibn al-Hajib said that.

12.6b. How joining is done: when it is done

When this is the case the adhan for Maghrib is called at the beginning of the time outside the mosque. Then, according to Malik, you should wait a little,

[The well-known position of Malik is that you wait a little. Ibn 'Abdu'l-Hakim and Ibn Wahb disagrees, but this is the well-known position. Maghrib should be delayed a little so that those whose houses is far from the mosque can come to the mosque.]

12.6c. The iqama for Maghrib of the joined prayers

then call the iqama inside the mosque and do the prayer.

[After this short delay, it is sunna to give the iqama for the prayer inside the mosque. It should not be long in the well-known position because it should be shortened in other instances and so it is more appropriate here. Ibn al-Hajib said that joining should be intended in the first. There are two statements about when he delays it to the second, i.e. about whether or not it is allowed. Both agree that the intention should be with the first and the dispute is whether it is allowed when it is in the second, being obligatory that he intend it then. In short, its place is the first and it is demanded of the Imam and the follower. If the follower omits it, it is not invalid, and so it is obligatory, but not a precondition. As for the intention of the imam, it is necessary. If the Imam omits the intention to be imam, they are invalid since it is omitted in them. If he leaves it it in the second and does it in the first, the evident position is that it is sound and the second is invalid. He only prays it when the twilight vanishes. If he omits it in the first and intends to join, it is invalid because its validity is dependent on the intention of being an imam.]

12.6d. The adhan and iqama for 'Isha'

Then you call the adhan for 'Isha inside the mosque and do the iqama and then do the prayer.

[This is done after Maghrib is finished, without delay or glorification or praise or nafila. So there is no nafila between Maghrib and 'Isha' in the well-known position. The adhan for 'Isha' is given after Maghrib. It is

clear that this adhan is recommended because it is not a group which needs another one. It is inside the mosque so that people do not think that it is the time of 'Isha' has come. After the adhan, the iqama is given and the Imam leads the people in the prayer immediately. This is a precondition for every joining, and it is not particular to joining on a rainy night.]

12.6e. Leaving after the joining

Then everyone should leave while there is still some light left in the sky.

[They should leave after the prayer without delay. If they join and do not leave until the twilight has gone, then they repeat 'Isha'. It is also said that they do not repeat it.]

12.6f. The second case of joining: 'Arafat

It is an obligatory sunna to join together Dhuhr and 'Asr at Arafat at midday with an adhan and an iqama for each prayer.

[This is on the hajj. It is a confirmed sunna. This question is dealt with in the chapter on Hajj.]

12.6g. The third case of joining: at Muzfalifa

The same applies to joining Maghrib and 'Isha on your arrival at Muzdalifa.

[i.e the same judgement as regards the sunna and the adhan for Maghrib and 'Isha' applies at Muzdalifa. The author of the Mukhtasar considered it to be recommended. The accepted position is that it is sunna. This is when it is possible to reach it. If that is not possible due to illness or his mount, then he joins when the twilight departs when he stops with the Imam. The fiqh of the question is that the one going to Muzdalifa either

stands with the Imam or not.The obligation is that he stands with the Imam. If he does not stand with the Imam as when he stands alone or does not stand at all, he prays every prayer in its proper time.]

12.6h. The fourth case: joining when travelling

If you are travelling hard you are permitted to join two prayers together; that is to pray Dhuhr at the end of its time together with 'Asr at the beginning of its time and likewise with Maghrib and 'Isha.

[This is on an obligatory journey like the hajj and the commercial journey, whether the prayer is shortened in it or not. He is permitted to join two prayers whose time is shared, like Dhuhr and 'Asr, and Maghrib and 'Isha'. When midday catches him while travelling and he intends to camp before sunset, he can join Dhuhr and 'Asr at the end the first time and the beginning of 'Asr.

The description of joining Maghrib and 'Isha' the same as that of joining Dhuhr and 'Asr in that when sunset catches him and he intends to camp after dawn, he can join Maghrib and 'Isha' formally since he prays Maghrib near the vanishing of the twilight and prays 'Isha' at the beginning of its time because he will dawn here is like sunset in respect of Dhuhr and 'Asr.]

12.6i. When starting out

If you are starting your journey at the beginning of the time of the first prayer you may also join the two prayers together then.

[According to the famous position, he can join before he sets out by putting the first of them at the beginning of the ikhtiyari time and the other in its daruri time. This is the real joining. From this it is known that the daruri time of 'Asr extends before and after it. The real joining is not

like this and is only done by someone with an excuse in the form of a journey or something else. As for the formal joining, it is permitted for the one who has an excuse and others. When he intends to camp before the sun yellows, he cannot join. Rather he should pray Dhuhr before he travels and delay 'Asr until he stops, i.e it is obligatory because he is able to put each prayer in its allotted time in the Shari'a. He can choose about the 'Asr prayer. If he wishes he delays it until he stops. If he wishes, he brings it forward if he intends to camp when the sun yellows.]

12.6j. Fifth case: sick people joining prayers

Sick people are permitted to join the prayers if they are afraid, at the time or Dhuhr or Maghrib, that their sickness will cause them to lose consciousness before the time of the next prayer.

[They can join prayers which share in the time in the well-known position. Ibn Nafi' said that each prayer should be prayed in its proper time. If they fear that they might become unconscuious at the second prayer, they can join. This is at the beginning of the time of the first prayer according to the well-known position. It is said that the first is at the end of its time and the second at the beginning of its time. In the well-known position, he joins Dhuhr and 'Asr at midday and Maghrib and 'Isha' at sunset. He joins at the beginning of the time because he is afraid that he will become unconscious and that permits joining. It is like the the fever which comes in fits, i.e. shakes, or vertigo which will come at the second time when he is sure of that.]

NOTE: When he joins out of fear of being unconscious at the second time and then that is removed by being free of that, 'Isa said that he repeats the second prayer. Sanad said that he means within the time. The most probable is that it is the daruri time. Ibn Sha'ban said that he does not repeat it, but that weak.

12.6j. Second category Joining making it easier for the sick person

If joining the prayers makes things easier for someone suffering from dysentery or a similar illness, he can do the two prayers together either in the middle of the time of Dhuhr or when the redness in the sky fades after Maghrib.

[This applies to all illnesses which make it difficult for him to rise for every prayer. Then he can join two prayers whose time is shared, and so he joins Dhuhr and 'Asr in the middle of Dhuhr, and Maghrib and 'Isha' when the twilight fades. So Maghrib occurs at the end of its ikhtiyari time, based on its extending to twilight and 'Isha' at the beginning of its ikhtiyari time.]

12.7. PRAYER MISSED BECAUSE OF AN IMPEDIMENT

12.7a. Prayers missed while unconscious

If you faint you do not have to make up any prayers whose time finishes while you are still unconscious. If you regain consciousness, however, while there is still time to do at least one rakÔat you must make up that prayer.

[You do not have to make up any prayers while you were unconsious. The same applies to the one who is intoxicated by something lawful, as when someone drinks wine thinking that it is milk or honey. The same applies to someone who is insane. This is while they are in that state, whether what he misses it is a lot or little, as opposed to Ibn 'Umar who says that he makes up what is little, like five prayers or less. When you regain consciousness, you make up the prayer of the time, meaning within the daruri time. It is sunset for Dhuhr and 'Asr, and dawn for Maghrib and 'Isha' and sunrise for Subh.

He clarifies the amount and says that the time in which he recovers consciousness must be enough to perform one rak'at with its prostrations after obtaining what is necessary to perform the prayer, which is only

purity from minor impurity in the accepted position. When he faints and does not pray Dhuhr and 'Asr and there remains enough of the day to pray five rak'ats after purification from impurity, he does not make it up because he was unconscious in their time. If he recovers consciousness and there remains enough of the day to pray five rak'ats after purification, he makes them up because he was conscious in their time. If he faints when he has not prayed Maghrib and 'Isha', and there remains of their time the amount of five rak'ats, he does not make them up. If he becomes consciours for this amount, he makes them up. It is like that with the judgement in dropping and the making up when there remains four raka'ts of Fajr because one consideres the excellence of one rak'at from the first. If there remains the amount of three rak'ats of Fajr, 'Isha' falls and Maghrib remains his responsibility.]

12.7b. When a menstruating woman becomes pure

The same applies to a menstruating woman when she becomes pure. If, after doing ghusl straight away, there is still enough of the daytime left to do five rak'ats, she should pray both Dhuhr and 'Asr.

[Then means when her period stops. The same applies to bleeding after childbirth. She does not make up any prayer whose time has passed and performs a time sufficient for one rak'at or more remains after she has purified herself. The time in which she purifies herself is either day or night. In the day, it applies when she becomes pure and after she has purified herself with water when tayammum is not obliged for her. Otherwise it is the amount required for tayammum. In short purity is determined for her for more than what sufficient for a full rak'at with both prostrations. It is like all the excuses except for disbelief.]

12.7c. More about the menstruating woman

If there is enough of the night left to do four rak'ats she should pray both Maghrib and 'Isha. If there is less left of the day or night than that she should only pray the second of the two prayers.

[This is when she becomes pure at night. If, after she purifies herself, there is enough time for four rak'ats according to the position of Ibn al-Qasim based on estimating Maghrib with three rak'ats and one rak'at for 'Isha'. This is the determination for the woman at home and travelling without difference since there is no difference in the two night prayers between the resident and traveller.]

12.7d. When menstruation starts

If a woman's period starts with these same amounts of time left in the day or the night without her having done the prayers in question she does not have to make them up.

[This is five rak'ats in the day and four in the night, whether she delayed them out of forgetfulness or intentionally, and if she was rebellious in the deliberateness. If she menstruates and there remains of the day the amount of five rak'ats and she has not prayed Dhuhr and 'Asr, she does not make them up because she menstruated in the time.]

12.7e. More about when menstruation starts

However, if it starts in the daytime when there is only time for three rak'ats or less she should make up the first of the two prayers.

[If it starts in the day when she has not prayed Dhuhr and 'Asr, or she menstruates, and there still enough time for three rak'ats or less up to one, or she has not prayed Maghrib and 'Isha', she makes up the first prayer which is Dhuhr in the first instance and Maghrib in

the second because it came while she was pure and the second is omitted because she menstruated in its time. When the time is short, then the last is singled out for being caught or dropped.]

12.7f. Another point on this

There is a difference of opinion about the judgement if a woman's period starts when there is enough of the night left to pray four rak'ats. Some people say that the same applies and others say that since her period began in the time of both prayers she does not have to make either of them up.

[It is said that the judgement is like when she menstruates when there are three rak'ats of the night left: she makes up only the first prayer. That is stated by Ibn 'Abdu'l-Hakam and others, based on the calculating the second. Its reason is that when the time is short so that there is only enough for one of the two prayers, then the obligation is the last one. The other is that she does not make them up, and it is the position of Malik, Ibn Qasim and others. It is the school since they believe that calculation in two prayers with a shared time is by the first. Its reason is that the first of the two prayers must be advanced before the other and that actually obliges calculation of it. Then he discusses things which oblige wudu'.]

12.8. DEFECTS IN *WUDU'*

12.8a. Certainty about wudu' but not about breaking it

If you are sure that you have done wudu' but not sure whether you have broken it or not since, you should wudu' again.

[It is obliged according the well-known position. The literal words of the author are when doubt accompanies certainty at the same time, which is impossible. So it is better to assume the "then" means "and" so

he knows that the doubt is later than certainty. What is meant is something which breaks wudu' in general, whether that doubt is during the prayer or outside it, unless it arises in it after he has begun it feeling certain about purity. In such a case, he must continue in it and after he completes it is clear to him that he is still in purity he does not repeat it. If it it clear that he broke purity or he still has doubts, he is obliged to repeat it.]

12.8b. Miss out a fard aspect of wudu'

If you remember missing out any fard aspect of wudu' soon after finishing it, you do the thing you missed out and whatever comes after it.

[Then he speaks about the judgement of someone who omits any fard aspect of the wudu' or one of its sunnas. The first has four cateogries because he either omits it intentionally or forgetfully, and each of them either remembers soon after or a long time after. The second is also like that and so there are eight categories .

The first iswhen he remembers that he did not wash a fard part, like the face, hands to elbows, feet to the ankles, or wipe the head, and it is soon after, it is an obligation that he repeat that with the intention of completing wudu' because the fard is not removed by forgetfulness He must intend to complete wudu' in the well-known position. Otherwise it is not adequate as at-Tata'i clearly states. When he does what he left out, it is recommended that he repeat what followed it to the end of wudu' for the sake of the proper order. Some commentaries say it is sunna.

There is disagreement about the definition of nearness. Ibn al-Qasim refers to custom in all that is not defined by the Lawgiver. He says that its limit is as long as the limbs have not dried within the normal time and the normal limb and normal place. It is well-known.]

12.8c. Second category: if it is after a long time

If some time has elapsed you just do the thing you missed out

[When he remembers the forgotten things after the washed place is dry, he only does it three times with the intention immediately at the time when he remembers. If he delays it a long time after he remembers it, his wudu' is invalid, even if he forgets, because he does not have the excuse of forgetting the second time in the accepted position. Ibn Habib says that he repeats it.]

12.8d. Third category: Deliberate

except if you missed it out deliberately in which case you must do the whole wudu' again.

[i.e. you deliberately missed out one of the fards of wudu', then it is obligatory to begin again if it is a long time since omitting washing the washed limb or wiping the wiped limb. This is based on the fact that doing it immediately is obligatory. It is to do wudu' in the same time without significant separation with remembrance and ability. It is the well-known position.]

12.8e. Fourth category: deliberate but not long

[The fourth category is when he intentionally omits that and not long has passed: he repeats it and what is after it for the sake of order. There is no difference betwween the deliberate and forgetful when it is soon, but they differ after a long time. The forgetter builds, even if it is a long time, as opposed to when it is deliberate. If a long time has passed, he starts wudu' .]

12.8f. If you have done the prayer

If, in any of the above situations, you have already done the prayer you must do it over again no matter how much time has gone by having put right wudu' as necessary.

[If he omits any fard element of his wudu' and then prays with that wudu', whether deliberate or by forgetfulness, soon or after a long time, then he must always repeat the prayer because he prayed it without wudu'. But repeating wudu' is in the one category and it is when it is intentional and a long time has passed.]

12.8g. Fifth category: omitting a sunna element

If you remember missing out something like rinsing out the mouth or snuffing up water or wiping the ears and only a short time has elapsed you should do the thing you missed on its own.

[He does not repeat what is after it in the school because the order between sunna and fard is not obligatory.]

12.8h. The sixth: after a long time

If a long time has passed you must do the thing you missed before doing any other prayers.

[If he remembers what he forgot of the sunnas of his wudu' after a long time, he only does that which he forgot before any other prayers. As when he remembers after he has prayed Dhuhr, he does it for 'Asr if he is still in wudu'. So if he wants to pray 'Asr with it, it is sunna for him to do that omitted sunna. Tawaf is like the prayer. In short, if it is near, he does the omitted sunna when he wants to remain in purity. If he does not want to pray or do anything else and it is a long time, it is sunna to do when he wants to pray or do tawaf. Length means that he has prayed with that

wudu' and its absence is that he has not prayed with it. That is explicitly stated by Ibn al-Jallab.]

12.8i. Prayers already done

You do not have to repeat any prayer you have already done.

[When you pray with a wudu' in which a sunna is forgotten, because it was done with certainty of purity and because the prayer is not invalidated by omitting one of the sunan of wudu', even if all of them are omitted. It is like that with the sunnas of ghusl. There is strong disagreement about the sunnas of the prayer so that if he intentionally omits a sunna intentionally, it is said that the prayer is invalid. It is said that it is because of the absence of the sunna element because the obligation is applied to its sunnas, i.e. the prayer by the words of the Prophet, "Pray as you saw me pray." That is weak in respect of wudu' by the Prophet words, "Do wudu' as Allah has commanded you," i.e. he only commanded four.

The author did not speak about reversals, as when he puts the hands before the face, for instance. In short, the one who reverses repeats only that part if he reverses by forgetfulness. Otherwise it is always desirable to repeat wudu' and the prayer within the time and elsewhere. When time is short, there is no difference between it being deliberate or forgetful. He repeats what was reversed three times by the sunna in following it in the Shari'a, one each times is not desirable.]

12.8j. Impurity on the mat

If a mat has some impurity on it but you do the prayer on a part which is pure your prayer is valid.

[If whatever you pray on has an impurity, wet or dry, whether or not it moves when he moves, he does not have to repeat the prayer because it

is not invalid so that it would need to be repeated. He is asked to purify the place which his limbs touch. This is opposed to the turban whose end hangs on the ground where there is impurity: his prayer is invalid by agreement if the the impurity moves with it.]

12.8k. A dispensation

There is no harm in a sick man putting down a thick cloth which is pure over his bedding which has impurity on it and then doing the prayer on that.

[It is a precondition that the garment on which he reclines is separate from the place of prayer. Otherwise the prayer is invalid. It is also a precondition that it be thick and not thin. It clear from this that the healthy person has no excuse to do that, and that is the explicit text of the *Mudawwana*. It is said that that is general to the sick and healthy person and Ibn Yunus says that it is correct.]

12.9 The Prayer Of A Sick Person

12.9a. If he is unable to stand

If a sick man cannot pray standing up

[If a person cannot stand upright to recite all of the Fatiha on his own or leaning on someone else other than someone in janaba or menstruating or it will entail great hardship. If he is ill, then he is either unable to stand at all, or fears he will become ill, or it will increase, or there will be great hardship with the precondition that he is ill, not that he is healthy. If he is healthy, the hardship mentioned does not permit him not to stand and make it permissible for him to pray sitting. The obligation to stand independently is in the state of doing obligatory elements, like ruku', tahrim and reciting the Fatiha for other than the one following, and not for the one following. If the one following leans on a pillar while

it is recited such that if it were to be removed, he would fall, is prayer is still valid as is the case absolutely in the reciting the sura, i.e. for one praying alone, an Imam or one following, as is confirmed by the one who knows and does not pay attention to what was said other than that. Some commentators are mislead by the literal expression.]

12.9b. The sick person prays as best he can

he should pray sitting down, cross-legged if possible; if not then to the best of his ability.

[On his own in the well-known position, i.e. it is not valid for him to be Imam either for those ill or healthy, even those like him. That is what some of them state, but that is weak. The accepted position is that the Imam should be healthy for those who are healthy. It is best that he sit cross-legged in the place of standing, if he is able to do so. This is on the basis that sitting is a substitute for standing. It is said that he sits as he sits for the tashahhud, and the later people prefer that. According to the first, he alters his sitting between the two prostrations, as in the tashahhud. Similarly, it is the best in respect of nafila prayers to sit cross-legged since the Prophet did that. Otherwise he sits as best he can, and it is desirable but not obligatory that there be an order between it and being cross-legged.]

12.9c. Gestures for prostration and bowing

If he is not able to go into sujud he should make a gesture of going into ruku' and sujud, making what he does for sujud lower than what he does for ruku'.

[If the sick person cannot sit, he indicates prostratation by bowing. If he is unable to it altogether or there will be great hardship in going so, he indicates by his head and back, i.e. must indicate with them. If he cannot do it with his back, he indicates with his head, If he cannot do that, then

he indicates as he can, and places his hand on his knees when he indicates bowing. When he rises, he raises them. When he indicates prostration, he places his hands on the earth and when he rises from it, he places them on his knees. It is recommended that his prostration be lower than his bowing. Some say that it is obligatory. It is understood from the words of the author and the *Mudawwana*. It is also understood from some of the commentators on Khalil. When you know that, then the judgement that it is recommended is weak. It is disliked for the one who gestures to lift anything on which he prostrates. If he does that he does not repeat his prayer, whether he does that intentionally or out of ignorance. This is when he intends the earth by his indication. If he intends that what he lifts is not the earth, it is not permitted, as al-Lakhmi said.]

12.9d. If he is unable to sit

If he cannot sit he should pray lying on his right side making gestures to indicate the various positions.

[If he cannot sit on his own or supported or cross-legged or otherwise, he prays on side with his face towards qibla as he would be in the grave. If he cannot go on his right side, then on his left side.]

12.9e. If he can only lie on his back

If he is unable to do anything but lie on his back he should pray in that position.

[If he cannot only pray on his back, he gestures with his feet to qibla. If he is unable to pray on his back, he prays lying on his stomach with his face to qibla and his feet behind him. The judgement about facing qibla in those states is that it is obligatory when he has the ability to do so. If he prays to other than qibla when he is able to face it, the prayer is invalid. The ability is when there is someone who is able to move him. If

he finds someone to move him after the prayer, it is recommended that he repeat it within the time.

The one who prays lying down indicates with his head. If he is unable to indicate with his head, he indicates with his eyes and eyebrows. If he cannot do this, then it is with his finger. The literal text as al-Ujhuri said is that the order in the gesture using these three is obligatory.]

12.9f. The prayer should not be delayed

As long as he is in his right mind he should not delay the prayer and do it as best as he is able.

[This means he does not omit it, and he should pray as best he can, standing, sitting, indicating and lying down. The sick person prays according to his ability, even only with the intention of its actions, if he is unable to indicate with a limb or something else. He intends its pillars with his heart so that he intends tahrim, recitation, bowing, rising and prostration, etc. of the actions of the prayer.]

12.9g. Tayammum

If a sick man cannot use water because doing so would be harmful to him or because he cannot get anyone to bring him any, he should do tayammum. If he cannot find anyone to bring him earth, he should do tayammum using the wall at his side provided that it is made of clay or covered with clay. However if the wall is covered with plaster or whitewash it cannot be used for tayammum.

[When the one who must perform the prayer is unable to use water, then he does tayammum. If no one brings him earth, he can use the wall if it clay, or covered with clay. So he can do tayammum with earth brought to him. It is also understood that he only uses the wall for tayammum when there is no earth. That is different from the School. The School is

that it is permitted to do tayammum with the wall when there is earth, but it is desirable that he not do tayammum with it except when there are is no earth. The author of the *Mukhtasar* said that it is like earth, and it is best. In short, the sick person or healthy person is permitted to do tayammum on the unbaked brick wall and the stone wall, even if he finds earth when there is no barrier to prevent him touching it. If the wall is covered with something manufactured, it is not used. Az-Zabidi mentioned it.]

12.10. THE PRAYER WHILE MOUNTED

12.10a. In case of mud which prevents prostration

If the prayer becomes due while you are travelling and you cannot find anywhere to pray because of mud, you should get off your riding animal and do the prayer standing up, making the motion you do for sajda lower than the one for ruku'.

[When you are travelling and the ikhtiyari time is short, as it says some of the commentaries on Khalil and the commentary of at-Tata'i. The best time is that in which it is ikhtiyari or daruri. If it is light mud, and he despairs of getting out of it in the ikhtiyari or daruri time and he is able to dismount, but cannot find any place to pray because of soiling his clothes or flood on the road, then he dismounts and prays standing, bowing for ruku' and prostration. He indicates ruku' by partially bowing his chest. If he touches his knees, for instance, which is a full ruku', then he bows in fact and his indication of prostration is lower than ruku'. When he indicates ruku', he places his hands on his knees and when he rises he lifts them from them. When he indicates prostration, he indicates the earth with his hands and intends to sit between the two prostrations standing, and the same with the sitting of the tashahhud. While standing, he separates the standing and sitting with an intention. As for the one who thinks it probable that he will get out of it before the end of the time, he delays it to the end of the time.]

12.10b. The necessity of praying mounted

If there is so much mud that you cannot even dismount you should do the prayer on your riding animal facing qibla.

[i.e. the place where he would alight from his mount. He prays by indication, but if he cannot dismount out of fear of sinking, he prays on his mount towards qibla. The prayer on the animal is only permitted by fear of sinking. Fear of getting his clothes dirty does not oblige the validity of the prayer on the animal. It is permitted to pray by indication on land. It is the same, for instance, if he prays on the animal facing qibla when thre is no mud and he fears to dismount because of thieves or wild animals. Then he can pray on his animal and indicate ruku' and prostration the earth and he lifts his turban from his forehead when he indicates prostration. He does not prostrate on the saddle or anything else. He sits cross-legged if he can. The judgement of the resident is like the traveller when the time finds him in deep mud.]

12.10c. Nafila prayers while on the move

A traveller can do nafila prayers on the move while seated on his riding animal no matter what direction the animal is going in,

[If he is riding on his back or in a sedan or something else. But he must be riding normally. The literal words of the author would mean whether or not he is facing qibla when he begins the prayer, as oppposed to the text of Ibn Habib that he turns his animal to qibla first and then says the ihram and then prays wherever it turns. The school of Malik permits that at night and day as opposed to Ibn 'Umar, who does not allow the traveller to do nafila in the day.

He should be seated cross-legged if possible and lift his turban from his forehead in prostration He can hit and kick the animals, but should not speak nor look around. The traveller rather than the resident is

mentioned. The walker does not do nafila in his journey walking. He said, "No matter what observe direction the animal is going" excludes someone on a ship, He does not do nafila on it except towards qibla, and turns with it wherever it turns if he can do that. The basis in what he mentioned is that is confirmed that the Prophet prayed on a camel in any direction it turned, and did the witr on it, i.e. nafila and not the obligatory prayers.]

12.10d. Proviso about the journey

provided that he is on a journey for which the prayer can be shortened.

[i.e. the precondition of the traveller doing nafila on the animal wherever it turns is that the journey is one in which the prayer can be shortened. If it is a less shorter than that or a journey which involves disobeying Allah, that is not the case.]

12.10e. Praying the witr mounted

He can also do the witr mounted if he wants.

[With the previous preconditions. If he wants, he performs the witr on the ground, which is preferable.]

12.10f. Fard prayers while travelling

However fard prayers, even in the case of illness, should only be done on the ground unless the illness is such that getting off the animal would mean that the sick person was forced by his illness to do the prayer sitting down using gestures. In this case he should pray on his animal after it has been brought to a halt and made to face qibla.

[Even if the traveller is ill he can only pray on the earth by the evidence of the precious hadith. However, if he is so ill he can only perform prostration and bowing with gestures, then he can pray on the animal. In the *Mukhtasar* there is permission without dislike. In the *Mudawwana* it is disliked. It is limited by the direction he faces with his animal. If he stops and faces qibla and prays, there is no dislike. This qualification is transmitted by al-Fakhani from the Shaykh. He said that what is in the *Risala* qualifies what is in the *Mudawwana*.]

12.11 NOSEBLEEDS

12.11a Stopping for a nosebleed

If you have a nosebleed when you are praying behind an imam you should go out and wash off the blood

[You leave to wash off the blood from the nose, holding the nose from the top if you does not suspect that it will last to the need of the preferred time. If you think that it will last to the end of the preferred time, you completes the prayer and do not go out, even if the blood is flowing if you are not in a mosque, or in a mosque if you have spread out something to catch the blood, or or it is pebbles or earth with no mat on it because that is due to necessity. You wash away the blood when you finish. If he is in a carpeted or tiled mosque, and you fear you will soil it, even less than a dirham, you must stop.]

12.11b. Resuming the prayer

and then return and complete the prayer as long as you have not spoken or stepped on any impurity.

[After washing the blood off, you complete the prayer because the faqih speaks about independent judgements and the prayer is not stopped in the famous position. Ibn al-Qasim said that the best is to stop. The basis

of the famous position is the action of the majority of the Companions and Tabi'un. Abu Hanifa said that the prayer is invalid based an emergence of impurity which breaks wudu'. We said that it there is building on what was done. That has six preconditions of which two are indicated when he mentioned not speaking or stepping on impurity.]

12.11c. Preconditions: 1. Not speaking

[It is clear that speaking invalidates it if he speaks at all: deliberately, out of ignorance or forgetfulness.]

12.11d. Preconditions: 2. Not stepping on impurity

[The second precondition is clear because it is evident that it invalidates if he steps on impurity at all, whether wet or dry. If it is wet it is agreed that it invalidates. If it is dry, like a skin, it is like that according to Sahnun. As for the droppings and urine of animals, he continues when he stops on them by agreement because roads are not free of that in general. Al-Hattab said, "He must qualify what he steps on forgetfully or by necessity for that is by its generality and spread over the road. As for walking on it deliberately without excuse when the road is wide and it is not universal and there is a possibility of stepping over it, then it must invalidate his prayer by the negation of the cause which is necessary.]

12.11e. Preconditions: 3. Proximity of water

[The third precondition is that he does not go pass water which is near to other water.]

12.11f. Preconditions: 4. Not turning one's back on qibla

[The fourth is that he does not turn his back on qibla for other than seeking water. As for the seeking water, that does invalidate.]

12.11g. Precondtions: 5. The blood drips or flows

[The fifth is that the blood drips or flows and and does not splatter. If it only leaks without flowing or dripping, he does not leave to wash it.]

12.11h. Precondition: 6. It is in a group prayer

[The sixth is that the nosebleed occurs in the group prayer, whether he is an Imam or follower. As for the one on his own, there are two famous statements about building on it, which derive from whether the allowance of building is for the respect of the prayer, which prevents its invalidation, or is to obtain the benefit of the group.]

12.11i. Discounting partially completed rak'ats

You should discount any partial rak'at you have already prayed unless you completed its two sajdas.

[It is not counted as a rak'at if it has not been completed with its two sajdas according to what is transmtited from Ibn al-Qasim. Ibn Maslama said that he builds on it, be it a little or a lot. That is in the first rak'at or others. Ibn 'Abdu's-Salam deduced that according to the transmission of Ibn al-Qasim, if he has a nosebleed after ruku' and before prostration or after one prostration, that is void and he begins with the recitation.]

12.11j. When the bleeding is slight

If there is only a little blood you should not leave the prayer but staunch the blood with your fingers except if it is pouring out or dripping.

[You staunch it with the ends of the fingers of the left hand, and the manner of staunching it is to first with the end of the thumb and the little finger, then the finger next to the little finger, then the middle finger and

then the index finger. This is unless it is pouring out or dripping. In such a case, he does not staunch it, but goes fror water.]

12.11k. Breaking off a prayer because of vomiting or breaking wudu'

You may not, however, complete a prayer in this way if you have to leave it because of vomiting or breaking wudu'.

[Absolutely, whether intentional or inadvertant, i.e vomiting something impure which leaves him in the state of the prayer, even if a little, and the same holds true for vomiting a lot of what is pure. The upshot is that the prayer is not invalidated by the pure provided that it a little and comes out usually. When it is impure, even if a little, or a lot of the pure, or vomited deliberately, then the prayer is invalid. The same holds true if he intentionally swallows it. The case is that it comes out usually. If he swallows iit usually in that case, there are two equal statements about his prayer being invalid neither of which are preferred. That is not the case in the inadvertant.]

12.11l. When the nosebleed coincides with the salam

If your nosebleed starts after the imam has said the salam, you say the salam and then leave the prayer-line, but if it starts just before the imam says the salam you should go out, wash off the blood, come back, sit down, and then say the salam.

[It is permitted for him to say the salam while he has the impurity because it is easier than going for water. If it is before the salam of the Imam, he goes for water because if he does not leave, he deliberately carries impurity in his prayer while some of it still remains. Then he returns and sits and repeats the tashahhud if he has said it in the well-known position. If he has not said it, there is no dispute that he says it. His words would seem to mean that he leaves to wash off the blood,

even if the salam of the Imam was after his nosebleed. That is not the case, If the salam of the Imam was close to his nose-bleed, he says the salam and goes and his prayer is allowed, as in the question before it. He no longer owes any actions of the prayer which would have to be restored. Then he goes on to make clear where the one with a nosebleed ends his prayer after washing off the blood with the previous preconditions.]

12.11m. Where to finish the prayer

If there is no chance of catching the end of the prayer with the imam, you can complete the prayer in your house

[If he is in a group, he can complete it in his house where he washed off he blood if he can or the nearest place in which he can pray if he despairs - or thinks it probable that he will not catch the prayer. Ibn Naji said if he hopes to catch any of the prayer with the Imam, even the salam, he returns to it. It is like that also in *Mudawwana* and elsewhere. Ibn Sha'ban said if he does not hope to catch a rak'at, he complete the place. What was said about completing the prayer in any place is general to all prayers except one: Jumu'a.]

12.11n. If it happens in Jumu'a

except in the case of Jumu'a when you must complete it in the mosque.

[This is when he catches one rak'at with the Imam with its prostrations. He must also return if he thinks that he will catch a rak'at with the Imam after he returns, even if he did not catch a rak'at with him before the nosebleed. If he does not catch a rak'at before the nosebleed nor think that he will catch it after he returns to the Imam, he does not return. He begins Dhuhr with ihram. If he builds on his ihram, and prays four, then it is evident that it is sound as al-Hattab said.

He must complete it in the mosque in which he began it, even if he thinks that the Imam has finished because the mosque is a precondition for the validity of Jumu'a and it is not complete in its courtyard, even if he begins there because of lack of space or joining the rows, as al-Hattab concludes. Ibn 'Abdu's-Salam says that it is is valid to complete it in the courtyard. Those who oblige completing it in the mosque in which he began it does not oblige the exact place in which he prayed with the Imam. It is enough that it is any place in it because otherwise would lead to a lot of action and a lot of it invalidates the prayer. If he prays in a mosque other than the one in which he prayed, his prayer is invalid, even if it is closer to him. It is clear from his words that he only completes it in the mosque, whether there is an impediment or not between him and returning to it. That is the well-known position, and accordingly, if something comes between him and the mosque in which he began it before he completes the prayer, then his Jumu'a is invalid

After speaking on the nosebleed, he speaks on an earlier question in the chapter of purity because it is appropriate to this question.]

12.12 Purity After A Nosebleed

12.12a. A small amount of blood on clothes

If there is a small amount of blood on your clothes you should wash it off but you do not have to repeat the prayer.

[It is a recommendation which is the agreed position since it is stated that blood is overlooked. Washing it refers to also to the body and the place. Ibn 'Umar said that the author meant the recommendation and so it means that this is desirable and not obligatory. This is the school of the *Mudawwana* , i.e. about washing off a small amount of blood, not a large amount is recommended in the school of the *Mudawwana*, i.e. it is confirmed. This is known that the school of the *Mudawwana* recommends washing off a little, not a lot. It is differs from what Zarruq

said about the school of the *Mudawwana* being that it is obligatory to wash off a small amount of blood.]

12.12b. A large amount of blood

You only have to repeat the prayer if there is a large amount of blood.

[There is a well-known disagreement about its definition and the definition of a lot. It is said that a lot in according to custom, and it is said that it is not. The well-known position is that a lot is the size of the Baghli dirham. So whatever covers the area of the Baghli dirham is a lot. Malik indicated that in *al-'Utbiya*. Ibn Sabiq said a that a small amount is less than a dirham and a lot is more than it. The position of the author is that he does not repeat it, meaning within the time if he prays forgetting about it. If he prays with it deliberately, he always repeats it according to the position of Ibn al-Qasim. That is because Ibn al-Qasim says that it is obligatory to remove impurities, and blood is one of them. This is contrary to what is transmitted by the author of the *Bayan* that the well-known position is the transmission of Ibn al-Qasim from Malik that removing the impurity is sunna. Impurities other than blood have a different judgement according to the disagreement between a little, which is overlooked and a lot, which is not. Fearing that someone might imagine otherwise, he says:]

12.12c Other impurities

With any other impurity it is immaterial whether the amount is small or large, you have to repeat the prayer in any case.

[A small amount of any other impurity must be removed and the prayer always repeated when he prays it deliberately wearing an impure garment, and in the time if he prays it forgetfully or by inability. The difference between blood and other impurities is that blood cannot be

guarded against because the body of man is like a vessel filled with blood as opposed to other impurities which can generally be avoided.]

12.12d. Blood from insect bites

You do not have to wash off the blood which comes from insects bites except if it is excessive.

[Because washing it is great hardship and extra imposition since man is almost never without a little blood, which is overlooked. Excessive means more than normal: then it is recommended to wash it. It is said that it is obligatory and the definition of excessive is that when it reaches a point at which he would be embarrased by among people.]

CHAPTER THIRTEEN: ON THE SAJDAS OF THE QUR'AN

The prostrations of the Qur'an are sunna. The decision of Ibn 'Arafa is the preferred. It is said that they are meritorious. Ibn al-Hajib and others said that it is well-known for the reciter and the one who intends to listen, not the one who hears it.

13.1 PRECONDITIONS

[There are three preconditions for the prostration of the listener.

1. The reciter is fit to be Imam, i.e. he is a sane, adult male in wudu'. He does not prostrate when he hears an ayat of prostration recited by a hermaphrodite, woman, child, or someone not in wudu'.
2. The listener is sitting to learn from the reciter what he needs of recitiation in *idgham* or memorisation of what is recited.
3. The reciter has not sat so that people can listen to the excellence of his recitation. He has sat to recite the words of Allah or intends to let people listen for the sake of admonition and preventing acts of disobedience.

When these preconditions exist, and the reciter does not prostrate, the one who intends to listen prostrates according to the well-known position.]

13.2 VERSES WHERE PROSTRATION IS MADE

THERE ARE ELEVEN SAJDAS IN THE QUR'AN, THESE BEING THE PLACES WHERE YOU ARE COMMANDED TO GO INTO SUJUD. NONE OF THESE ARE IN THE *MUFASSAL* . THEY ARE:

[They are called *'aza'im* in Arabic to encourage that it be done out of fear of abandoning them which is disliked. The *Mufassal* are those frequently separated by the basmala, the first of which is *al-Hujurat* (49), according to some. So there is no prostration in *an-Najm*, *al-Inshiqaq* (84), and *al-Qalam* (68).

The first is:]

1. In *Surat al-A'raf*, (7:206) where Allah ta'ala says: (And they glorify Him and to Him they prostrate) which is the end of the sura.

If you are doing the prayer you should go into sujud when you reach this point and then recite what is easy for you from *Surat al-Anfal* or some other sura and then go into ruku' and sujud.

[If you are doing a prayer, whether nafila or obligatory and recite it, then you prostrate for it at the moment of respect because it is subject to the prayer. It is disliked to intentionally recite an ayat of prostration in an obligatory prayer. After prostrating, it is recommended that you stand and recite some of *al-Anfal* or another which is easy, then do ruku' as normal so that it is not immediately after prostration.

The rest are:]

2. In *Surat ar-Ra'd* (13:15) where Allah ta'ala says: (...and their shadows in the morning and the afternoon).

3. In *Surat an-Nahl* (16:50) where Allah ta'ala says: (They fear their Lord above them and do what they are ordered to do.)

4. In *Surat al-Isra* (17:109) where Allah ta'ala says: (They fall on their faces weeping and it increases them in humility.)

5. In *Surat Maryam* (19:58) where Allah ta'ala says: (When the signs of the Rahman are recited to them they fall down prostrating and weeping.)

6. In *Surat al-Hajj* (22:18) where Allah ta'ala says: (Whomever Allah abases no one can ennoble. Surely Allah does what He wills.)

7. In *Surat al-Furqan* (25:60) where Allah ta'ala says: (Should we prostrate to what you order us to prostrate to? And it makes them run even further away.)

8. In *Surat an-Naml* (27:26) where Allah ta'ala says: (There is no god except Him, the Lord of the Mighty Throne.)

9. In *Surat as-Sajda* (32:15) where Allah ta'ala says: (They glorify their Lord with praise and they are not proud.)

10. In *Surat Sad* (38:24) where Allah ta'ala says: (He sought forgiveness from His Lord and fell down bowing and turned to His Lord in repentance.) It is also said that this sajda is done after the words. (...an exalted place with Us and an excellent return.) (38:25)

11. In *Surat Fusillat* (41:37) where Allah ta'ala says: (And prostrate to Allah who created them if it is indeed Him you worship.)

13.3 How The Prostration Is Done

13.3a. You must be in wudu'

You do not do these sajdas in the Qur'an unless you are in wudu'.

[Preconditional for it is what is preconditional for the other prayers: purity from both major and minor impurity and facing qibla.]

13.3b. The takbir

You say a takbir for them

{In going down and coming up by agreement if that is while he is in the prayer, and in the well-known statement, if he is not in the prayer. It is said that it is disliked and it is said that he can choose between the takbir or not doing it. Then there are three positions. He does not raise his hands, which is disliked in going down and rising. There is no tashahhud in the well-known position. It is also said that there is a tashahhud.]

13.3c. No salam

but do not say the salam.

[There is no salam, i.e. it is disliked unless he intends to remove any dispute.]

13.3d. The takbir on rising

There is leeway as to whether you say 'Allahu akbar' as you come up from the sajda although we consider it preferable to do so.

[It a fourth position in the question in which Ibn al-Hajib relates three positions, i.e. he has a choice when he rises, but not when he does down, as Ibn Naji pointed out. Do his words, 'Whether you say 'Allahu akbar' although we consider it preferable' refer to the takbir when rising? i.e. does it mean that he says the takbir when rising as he does when going down so that it is the same as the first of the three positions, or does the takbir refer to rising and going down which is also the first? So in any case he chooses the well-known position.]

13.4. When To Do Or Omit The Prostration

13.4a. In the prayers

You should do these sajdas, if you recite the ayats where they come, in both fard and nafila prayers.

[These prostrations are done in the fard and nafila prayers, whether you are the Imam or praying alone, even if it is disliked to recite them intentionally in the fard prayer in the well-known position. It is disliked for the Imam and someone praying alone to recite the prostration ayat deliberately in the fard because if he does not prostrate, he enters into the threat, and if he prostrates, he increases the prostation over the obligation and that might lead to confusing those following. As for the nafila, it is not disliked to intentionally recite the prostration ayat in them alone or in a group, outloud or secretly, resident or on a joruney, at night or day, confirmed or not confirmed, fearing to confuse the one behind him or not.]

NOTE ONE: Part of what he says about the fard and nafila is that if he recites them in a khutba he does not prostrate. It is said that is since there is no space in it in the order of the khutba and the judgment is that reciting it is disliked. If it occurs that he prostrates in the khutba, it is not invalid, even if he is forbidden to prostrate.

NOTE TWO: If an imam recites a prostration ayat and does not prostrate, then the follower leaves it. If the follower prostrates when his Imam has not done so, his prayer is invalid when that is deliberate rather than inadvertant, as the prayer of the follower is not invalid by not prostrating with the Imam who prostrates, even if he leaves it deliberately - but he has behaved badly. Ibn Wahb related that it is not disliked to recite it in the fard. Al-Lakhmi, Ibn Yunus, Ibn Bashir and others say that is correct since it is confirmed that the Prophet continued to recite the prostration ayat in the first rak'at of the Subh prayer on

Jumu'a. Ibn Bashir said, "Our excellent shaykhs and theirs used to persevere on that, and it is done at any time of day or night except the Friday khutba, sunrise, when it becomes yellow and daybreak. It is disliked to do it at these times. There is disagreement about doing it at daybreak and yellowing after praying Subh and afrer praying 'Asr. In the *Muwatta*' it is absolutely not allowed after them, either in yellowing or daybreak. In the *Mudawwana*, it is the accepted position that he can prostrate after it after them as long as it is not yellow or daybreak. This is what the shaykh says.]

13.4b. At times when prayer is forbidden

You should also do them if you recite any of these ayats after praying subh, provided the light is not yet bright, and after 'Asr provided the sun has not turned yellow.

[This is a confirmed sunna. Thus it resembles funerals. and there is a difference between the one who does them in the two times because of it being confirmed sunna because the simple nafila are not done after 'Asr and after Subh.]

Chapter Fourteen: On Travelling Prayers

[Its judgement is that it is sunna. Its reason is the journey and its place is the four rak'ats prayer. One of its preconditions, which are four, is the distance. It deals with of what invalidates shortening and questions connected to it. He indicated the first five which are the description of the travel prayer and its judgement, reason, place and some of its preconditions.]

14.1 Travel Which Requires Shortening The Prayer

14.1a The distance

If you travel a distance of four mail stages which is forty-eight miles, you should shorten the prayer,

[This is when you intend to make a land or sea journey which is obligatory, like the obligatory hajj, or desirable, like voluntary hajj, or permitted, like for commerce, of at least four mail stages. This definition indicates the distance, and in terms of time, the prayer is only shortened in a journey of a day and a night by animals carrying normal burdens. If he shortens before that, it is said that if it is 35 miles, he always repeats it, and in 40 he does not repeat. There is some disagreement about whether he repeats it within the time or not. Ibn Rushd said in at-Tawdih that he always repeats for shortening the prayer in 36 miles in the School. The prayer which is shortened is the obligatory prayer and the prayer which is being made up.]

14.1b. The number of rak'ats

doing only two rak'as for each except in the case of Maghrib which is not shortened.

[Maghrib is odd and cannot be divided. It is also becuase it makes the number of prayers in the day odd. Subh is not shortened because it is not established in the Shari'a that it is shortened, which would make it one rak'at. He is silent about Subh because it is not shortened. So there is consenus that Subh and Maghrib are not shortened and so the journey has no effect on them.]

14.1c. Its preconditions

[There are preconditions for shortening:

1. The distance intended is in one go. If it is not intended, as when he goes for a need which he thinks is close but ends up going a further distance. Indeed, that is the case if he is sure that it is but he does not know exactly where. He does not shorten, even if he goes four mail stages. Similarly he does not shorten when he stays in the middle of distance for the time in which it is obliged to do the full prayer, like four days. To sum up, the first precondition contains two things: one is the intention and the second is that it is in one go.
2. The journey is a permissible one.
3. According to what is in *ad-Dakhira*, a traveller does not follow a resident. Ibn al-Qasim said in the book that he does it in full if he catches a rak'at with him. If he catches less than a rak'at, Malik said that he does not do the full prayer. The fiqh of the question is that if the follower is a traveller behind a resident sometimes he will intend the full prayer behind him and and he will make his ihram like that of the Imam. Sometimes he will intend the travel prayer. In all of this, he either catches one rak'at or not. In the first case, he follows him absolutely. In the second if he catches a rak'at with him, then his prayer is invalid. Otherwise it is valid and he prays two rak'ats.
4. He does not turn a short journey into a long one without excuse.

5. He does not shorten the prayers until he leaves the houses of the town behind him.

14.1d. When you can start shortening

You are not permitted to shorten the prayer until you have passed beyond the houses of the town you are in so they are all behind you, leaving none in front of you or level with you.

[Ibn Naji says that it is whether it is a place where Jumu'a is held or not. That is the case in the well-known position. Opposite it is what Mutarrif and Ibn al-Majishun related from the Imam that if the town from which the journey begins is a Jumu'a town, the prayer is not shortened until he has gone three miles beyond its walls. Otherwise, it is from the end of its buildings. The place of the dispute is about adding the gardens when it happens that he passes the gardens. If the houses are separate, he must leave them all when they are united under the name of 'quarter' and 'abode' or the name 'abode alone or the name 'quarter' when when share together. Otherwise he shortens as soon as he leaves his house. It is clear that they are behind him.]

14.1e. When you stop shortening

You do not leave off shortening the prayers until you return to the place you set out from or come within a mile of it.

[Until he returns to the houses or less than a mile. Ibn 'Umar is unsure of the words here. This phrase is unclear because at the beginning of his words he made it less than a mile while travelling and the last words he made him resident. This is not sound. Some say that the contradiction when he says, "until he returns to it." with "or is near to it" as another statement means until he returns to it means until he is near them. Then his words, "or near" mean the same. The upshot of this interpretation is that if he is less than a mile, he must do the full prayer, whether he is at its gardens or not. A little means a third of a mile, or more.]

14.1f. If a traveller stays in a place for four days

If a traveller intends to stay in a place for four days or twenty prayers he should do the complete prayer until he moves from that place.

[This is based on Ibn Naji. There are two positions. Shortening ends when he has the intention of staying four full days or more if it reaches twenty prayers, and it is that on whose basis Ibn al-Qasim proceded. Ibn al-Qasim considers that stopping the judgement of the journey is four full days and 20 prayers. So he considers that the stop which ends the judgement of the journey is that he stays until the fourth 'Isha'. If someone arrives before Fajr on a day and intends to leave after sunset on the fourth, he shortens because he will not be there for the period of 20 prayers. Sahnun and 'Abdu'l-Malik said that if the intention of what he will pray in it is 20 prayers, that ends the judgement of the journey. The point of the dispute appears when the time of Dhuhr comes. If he is able to perform the prayers according to Dhuhr of its day and 'Asr and he does Dhuhr and 'Asr in full. If he counts the days, he voids the day in which he entered, meaning he does not count it among the four days which he abides. If someone intends to remain for four full days, he prays in full from the time he enters the place in which he intends to remain. If he enters at Dhuhr, he does it in full and completes 'Asr and 'Isha' and the day he enters is not counted among the days which he abides.

They make an exception to the intention of remaining four days or more invalidating the principle of travel is the intention of an army to stop in the Abode of War. What is meant by the Abode of War is the place where the army settles, even in the Abode of Islam when it is not secure. Another things which stops shortening is the knowledge of abiding by custom like the custom of the hajji when he enters Makka to abide for four days.]

14.2. LEAVING AND ARRIVING TOWARDS THE END OF THE TIME OF DHUHR AND 'ASR

14.2a. Leaving before praying Dhuhr and 'Asr

If you leave a place before you have prayed Dhuhr and 'Asr and there is still enough daytime left to pray three rak'as you should pray them both as travelling prayers. If there is only enough time to pray two rak'as or one you should pray Dhuhr in full and 'Asr as a travelling prayer.

[If you start to travel in this case there is agreement if he omitted them by forgetfulness. The same applies is that if he left them intentionally but he is a sinner. If he is like that, he prays them as travel prayers because he travels in their time when Dhuhr is estimated as two rak'ats and one rak'at of 'Asr remains. There is disagreement about this estimation and whether or not one takes purification into account in it he he is not in a state of purity. Al-Lakhmi, al-Qarafi and Abu'l-Hasan said that. Others said that it, and that is the position of Ibn 'Arafa.

If there is only enough time for two rak'ats, you pray Dhuhr in full because you became responsible for it while resident. 'Asr is prayed with a travelling prayer, because he was travelling in its time. He begins with Dhuhr according to Ibn al-Qasim, which is the preferred position. He begins with 'Asr according to Ibn Wahb so that he does not miss it in its time. while Ashhab says that he begins with whichever he wishes because of the disgreement of the people of knowledge on that. Malik and Ibn Shihab both say that he begins with the first while Sa'id ibn al-Musayyab says that he begins with the last.]

14.2b. Arriving before having prayed them

If you return from a journey without having prayed these two prayers and there is still time for five rak'as you do them both as full prayers

[If you return from a journey and there is time for five rak'ats in the day, and you have forgotten to pray Dhuhr and 'Asr, you pray them as resident because you have caught their time with four of Dhuhr and one of 'Asr. The judement of the deliberate is the same as the forgetful.]

14.2c. When there is still time for four rak'ats

but if there is time for four rak'as or less down to one rak'a you do Dhuhr as a travelling prayer and 'Asr in full.

[Because the time for 'Asr went when you were responsible for it while travelling. 'Asr is prayed in full because he caught it while resident.]

14.3. Arriving at the End of the Time of Maghrib and 'Isha'

14.3a. When you arrive and there is time for one or more rak'ats

If you return during the night without having prayed Maghrib and 'Isha and there is still time enough before fajr for one or more rak'as you pray both Maghrib and 'Isha in full.

[This is estimated, and applies whether he omitted them out of forgetfulness or intentionally. They are prayed in full because there remains enough time to catch Isha' and so he is obliged to pray it as a resident. As for Maghrib, there is no disagreement that it is always three, either at home or on a journey.]

14.3b. Setting out on a journey

If you set out on a journey and there is enough of the night left to pray one rak'a or more you do Maghrib in full and pray 'Isha as a travelling prayer.

[Because he catches its time in the journey. The rule of this chapter in relation to the two night prayers is that it considers one rak'at on arrival and leaving, while in relation to the day prayers or one of them, on leaving if there is what is enough for three rak'ats, he prays the two travel prayers and two or one. The second is a travel prayer. In respect of the day prayers, if he arrives when there remains enough of the day to pray five rak'ats, then he prays them as resident. If there are four or less to one, he prays Dhuhr as a travel prayer. Allah knows best.]

CHAPTER FIFTEEN: ON THE JUMU'A (FRIDAY) PRAYER

[It is is obligatory. He clarifies the time of its obligation and the place in which it must be performed and for whom it is obligatory and other topics connected to it. It is derived from jama' (to gather) since people gather in it and the first to call it Jumu'a was Qusayy. He gathered Quraysh on that day and said, "This is the Day of Jumu'a."]

15.1. IT IS OBLIGATORY

Going to Jumu'a is obligatory.

[It is clear that what he goes to obligatory. The Friday prayer and going to it are obligatory by the Book, Sunna and consensus. In the Qur'an, it is the words of the Almighty, "O you who believe! When the prayer is called on the Day of Jumu'a, rush to the remembrance of Allah." (62:9) Al-Fakhani said that Malik said, "Going in the Book of Allah is action. Action and doing are synonyms," i.e. it means that rushing to remembrance means going in general, whether it is on foot or not. Al-Fakhani used as evidence for that the recitation, "go to the remembrance of Allah." What is meant by remembrance is the khutba or the prayer or both as stated by the commentator of the *Muwatta*'.

As for the Sunna, it is what is in Muslim from what the Prophet said about some people who refrained from going to Jumu'a: "I seriously thought about ordering a man to lead the people in prayer and then burning down the houses of certain men who failed to attend Jumu'a."

As for the consensus on that, al-Fakhani stated that there is no disagreement between the Imams that Jumu'a is an individual obligation. Going to it is obliged when there is no impediment. If there is is an impediment, then it is not obligatory. The impediment can consist of

various things: illness which makes it hard for him to do it, when one of his parents is ill or near death, or he fears loss. This also applies to close relative, like child or wife. Another reason is when he fears for his property from a ruler, thief or arsonists. Another reason is severe rain and mud, etc.]

15.1a. When it becomes obligatory

It becomes obligatory when the imam sits on the minbar and the mu'adhdhins begins the adhan.

[The obligation to go to the Jumu'a prayer begins when the mu'adhdhins begin the adhan if their house is near. As for someone whose house is far, it is according to what it takes to reach the place where Jumu'a is held at midday. These are the details for others than those by which the Jumu'a is held. As for those who make up the number by which Jumu'a is held, they are obliged to go so that he will hears the khutba from its beginning. Those in the city and a distance of three miles or less from it are obliged to go to it.

The two adhans were already mentioned. Jumu'a has two adhans: one did not exist in the time of the Prophet, and the other did. He explains the early one.]

15.2. The Sunna of the Adhan

The early sunna was for the mu'adhdhins to climb the minaret

[The desirable method is to ascend when the Imam sits on the minbar. This was the Sunna of the Companions since there was no minaret in the time of the Prophet. They used to give the adhan at the door of the mosque. Zarruq said that. So there was one adhan in the time of the Prophet which was done at the door of the mosque while the Prophet was sitting on the minbar. Then 'Uthman introduced another adhan

which was done before that on the minbar while the imam was also sitting on the minbar. Al-Fakhani reported that Ibn Habib said, "When the Prophet entered the mosque, he ascended the minbar and sat. Then the mu'adhhdins gave the adhan. There were three who gave the adhan on the minaret one after the other. When the third finished, the Prophet stood up to give the khutba. It was like that in the time of Abu Bakr and 'Umar. Then when there were a lot of people, 'Uthman commanded the introduction of an earlier adhan before that which was done on the minaret and it was done at midday at az-Zawra', a place in the market, so that people could gather and leave the market. When he went out and sat on the minbar, then the mu'adhdhin gave the adhan on the minbar. When Hisham ibn 'Abdu'l-Malik was khalif, he moved the adhan at az-Zawra' and put it on the minaret at midday. When he sat on the minbar, then an adhan was given in front of him. When the mu'adhdhin finished, he gave the khutba. The adhan which 'Uthman introduced is done first but was the second to be prescribed, and it happens now on the minaret. That which happens before the khatib is done second but was first to be prescribed because that which is now done before the khatib was done at the door of the mosque in the time of the Prophet and Hisham changed it." What is meant by the minaret in what Ibn Habib said is the place where the adhan was given because there was was no minaret in the time of the Prophet and the place of the adhan was at the door of the mosque.]

15.2b. Consequences of the adhan for Jumu'a

at that point when selling or doing anything else which might distract you from going to Jumu'a becomes haram.

[When the adhan is given before the Imam, then selling becomes unlawful for everyone for whom Jumu'a is obligatory except the one who is compelled to it as when it happens that the call for Jumu'a is given and he cannot find water with which to purify himself except by buying it. So both are allowed to buy and sell because this is part of

mutual help to worship. Other distracting things are forbidden: like eating, sewing, travelling, the gift, sadaqa and taking by a pre-emption.]

15.2c. Giving an earlier adhan

The calling of an earlier adhan is a practice which was introduced by the Banu Umayya.

[It was was introduced by 'Uthman ibn'Affan.]

15.3 Preconditions for Jumu'a

[Know that Jumu'a has preconditions for its being obligatory, and preconditions for its performance. The difference between them is that the preconditions for obligation are those by which responsibility arises and the legally responsible person is not required to achieve them. The preconditions for performance are those by which responsiblity is removed and it is obligatory for the responsible person to obtain them.]

15.3a. Preconditions for its being obligatory

[They are ten:

1. Announcement of the time
2. Islam
3. Adulthood
4. Sanity
5. Maleness
6. Being free
7. Residence
8. Health
9. Nearness so that he is not more than three miles away - or quarter or a third of a mile more.
10. That it be a settled place.]

15.3b. Preconditions for performance

[They are four:

1. The Imam,
2. The group
3. The mosque
4. The khutba.

The shaykh mentioned some of these conditions and he did not distinguish them from one another.]

15.3c. The required size of the town

Jumu'a is obligatory if there is a large enough town and a large enough group of people in it.

[It is clear from the school of Abu Hanifa that the Jumu'a is only held in the city. Some of his companions added that it should be in a city in which the Imam has established the hudud. The school of Imam Malik is that it is held in the city and in the town where buildings are connected, even if their connection is only be benefit in that they help one another, even the hudud are not established there. On this basis, the words of the Shaykh must be interpreted that it is said that he meant by town of connected buildings the category of towns.]

[Khalil said that it should be in the oldest mosque of the locality.)

15.3d. The group

[The second is a precondition for validity, i.e. for establishing the Jumu'a there must be a group. They do not give the number with Imam Malik, but what is meant is the existence of those who are independent in terms of defence and mutual help in things necessary for life. When can remain indefinitely with security and the power to defend themselves,

then the Jumu'a is valid, even if there are only twelve men remaining to complete the prayer with the Imam. There is no difference between the first Jumu'a and others.

15.3e. The khutba

There must be a khutba before the prayer.

[It is obligatory in the famous position, and it is said that it is sunna. They are both related in the preferences. It is a precondition of validity because it is not transmitted that the Prophet prayed Jumu'a without a khutba. If they pray without a khutba, then they repeat it within the time. If they do not repeat until the time has gone, they repeat it as Dhuhr.]

15.4. PRECONDITIONS FOR THE *KHUTBA*

15.4a. Khutba before the prayer

[There are preconditions for the validity of the khutba. The author indicates them, beginning with the khutba before the prayer since the Almighty says, "Then when the prayer is finished spread through the earth." (62:10) The fa' is for the order and consequence. It does not deny that people disperse after the prayer and it is not incompatible with its being after the khutba if the khutba is after the prayer. "Afterness' is a wide preposition. That is what was done by him and the Rightly-guided khalifs after him. Whoever is ignorant and prays before the khutba repeats the prayer only. One precondition is that it is after midday. One of them is that it is in the presence of the group by whom the Jumu'a is constituted. One of them is that it is two khutbas. If there is one khutba and then he prays, the Jumu'a is repeated after the second khutba. The separation between the two khutbas by the prayer is slight, and so it does not oblige the invalidation of the first khutba.

The least of what satisfies the khutba in the well-known position is that to which khutba is applied to by the Arabs. It is a form of rhymed words different from poetry or prose. For it to be done not in Arabic is null. If no one can be found who knows Arabic, then it is cancelled. It is said that its minimum is "Al-hamdu lillah" and the prayer on the Messenger of Allah" and cautioning and good news. This is weak since the accepted position is that they are recommended in the two khutbas. Another precondition it is that it is outloud. If it is silent it is null. There are two well-known positions about whether purification is a precondition for its validity. One of them if that purification is not a precondition and it is disliked without it.]

15.4b. Leaning on a bow or staff and sitting in the middle

During the khutba the imam should lean on a bow shaft or a staff. He should sit before the start of the khutba and in the middle of it.

[While he is giving his khutba, it is recommended that he lean on a bow shaft or staff.

He sits at the beginning of the khutba and in the middle. There is disagreement about this and in standing for it. Al-Maziri says that standing for it is obligatory and a precondition, It is said that it is a sunna. If he gives the khutba sitting it is valid, but he behaves badly. So both of the first and second sitting are sunna in the well-known position. The length of the middle sitting is that of the sitting between the two prostrations. The basis in what he mentioned is that continues to be the action in all cities and times from the time of the Prophet until now.]

15.4c After the khutba

The prayer is performed when the khutba is over.

[It is a precondition to connect the prayer to the khutba, and a short gap is overlooked as opposed to a large one. It is obliged as a precondition that the Imam of the prayer is the khatib. If something prevents his imamate, like breaking wudu', or a nosebleed, and water is near, the prayer must wait for him. If it is far, he delegates someone, and it is desirable that he delegates someone who was at the khutba.]

15.5 The Rak'ats of Jumu'a

15.5a. Two rak'ats done outloud

The prayer consists of two rak'as in which the imam recites outloud.

[There is agreement that the prayer is two rak'ats. If it is deliberately more, it is invalid. If he adds out of oversight, then he procedes on the basis of having added something to the prayer. The Imam must intend to be the Imam. Otherwise the intention is not adequate. It is recommended to perform the prayer at the beginning of the time. Bahram said that there is no one disagrees that the beginning of its time is midday. The well-known position is that it extends until sunset.]

15.5b. Recitation in it

In the first rak'a he should recite Surat al-Jumu'a (62) or something similar and in the second Surat al-Ghashiya (88) or something similar.

[There is consenus that recitation in it is outloud. In the first rak'at after the Fatiha he recites *Surat al-Jumu'a* (62). Ibn 'Umar objects to "or something similar" since it is recommended to recite *Surat al-Jumu'a*

(62) in it since it contains the rules of Jumu'a and because the Prophet used to recite it at the first rak'at. The answer to that objection is that he means to refute the one who said that the Prophet only recited it in Jumu'a. In Muslim we read that the Prophet recited *al-A'la* (87) in the first rak'at., There is no objection to the fact that in the second rak'at it is recommended that he recite *Surat al-Ghashiyya* (88) or its like.]

15.6 THE OBLIGATION OF JUMU'A

15.6a. Its obligatory nature

Going to Jumu'a is obligatory for anyone in the town or within three miles of it.

[It is agreed that it is obligatory if he meets the preconditions of the Jumu'a and has no legitimate impediment, as it is obligatory for those outside the city within three miles. That is the position of Ibn 'Abdu'l-Hakam and Ibn al-Hajib stated it. 'Abdu'l-Wahhab and others say that the distance begins from the mosque. That is the position of the author of *al-'Umda*. He deduced that because the definition of three miles is by hearing, and hearing related to the minaret. If it is said that it is not obliged if it is more, that is the position of Ashhab. What is relied on is the transmission of Ibn al-Qasim, that three miles is approximate and so it is obliged for those a little beyond it, like a third or quarter of a mile. Then he indicates the preconditions of Jumu'a:]

15.6b. Those for whom it is not obligatory

It is not obligatory for travellers nor is it obligatory for the people at Mina nor for slaves, women or children.

[It is agreed that it is not obligatory for the traveller, nor for the people of Mina other than its inhabitants. It is obligatory for its inhabitants when they have a sufficient number for Jumu'a, whether they are hajjis

or not. Nor is it obligatory for women or children by agreement. The basis in what was mentioned is what at-Tabarani related in al-Kabir from the words of the Prophet, "Jumu'a is obligatory for every Muslim except four - a owned slave, a woman, a child, and someone who is ill." If those for whom it is not obligatory he attends it and prays, it suffices for Dhuhr.]

15.6c. When a slave or woman is present

If a slave or a woman does attend they should do the Jumu'a prayer.

[Meaning it is sufficient for Dhuhr. In the case of the traveller, it is sufficient for Dhuhr according to Malik. Ibn al-Majishun said that it is not sufficient for him because he is not responsible for it. The nafila does not satisfy the fard.]

15.6d. Where women stand

Women should be behind the rows of the men. Young women should not go to Jumu'a.

15.6e. The obligation to listen to the Imam

It is obligatory to listen to the imam while he is giving the khutba

[It is obligatory for everyone who attends the Jumu'a to be silent and listen to the Imam while he is giving the first and second khutbas and in the stitting between them, whether he can hear the khutba or whether the Imam abuses someone he is not permitted to abuse or praises someone he is not permitted to praise. Ibn Habib said that words are permitted if the Imam says something which is not permitted. Al-Lakhmi says that it correct. The author of the *Mukhtasar* confines himself to it. One does bless the sneezer and he says"Praise be to Allah" silently in himself. One does not greet nor return a greeting, even by indication. One does not

drink water. In short, he is forbidden anything incompatible with the obligation of being silent, even for the one who is not listening. The basis for that is the words of the Prophet in the two *Sahih* collections: "Even saying, 'Be quiet!' to your companion while the Imam is speaking on the Day of Jumu'a constitutes foolish chatter." If commanding to the correct is called foolish talk, so that applies even more to other things. 'Foolish talk' is speech in which there is no good.

Among the times when speech is permitted is the time when he asks for blessing for the Companions and supplication for the ruler. It is permitted to speak during the khutba for certain matters which include a little dhikr when there reason for it, saying 'Amen' with listening to forgiveness or rescue from the Fire, seeking refuge when hearing the Fire and shaytan mentioned, and the prayer on the Prophet r when he is mentioned. All that is silent and disliked outloud.]

15.6f. Sitting facing the Imam

and you should sit facing him.

[The people face the Imam while he is giving the khutba, and all rows are the same in this. What al-Baji says about the first row not having to do that is weak.]

15. 7. Other Points Related to Jumu'a

15.7a. Ghusl

It is also necessary to do a ghusl before going to Jumu'a.

[Ghusl for the Jumu'a prayer is obligatory, not for the day. It is part of the *adab* of the prayer. It is obligatory as a confirmed sunna. Its time is before the Jumu'a prayer. It must be connected to going out to the Jumu'a in the well-known position. Ibn Wahb said that if he washes after Fajr,

that is enough, even if it is not connected to going out. It is performed the same as the ghusl on account on janaba.]

15.7b. Going early to the mosque

It is recommended to get to the mosque early but not right at the beginning of the day.

[One of the *adab* of Jumu'a is to go early. It is recommended because the Prophet and the Companions used to do that, i.e. they went to the mosque at this time. The first of what satisfies it is the sixth meant where the Prophet says, "Whoever washes on the Day of Jumu'a and then goes in the first hour, it is as if he offered a camel." It is not at the beginning of the day for that is disliked because the Prophet did not do it and none of the Companions did it.]

15.7c. Perfume and best clothes

It is also good to put on perfume and dress in your best clothes.

[It is recommended that perfume be put on for it. One of the *adab* of the Jumu'a is to use perfume for the one who attends it - men but not women. It is perfume whose colour is hidden and scent is discerned, like musk. By it he intends to obey the sunna and does not intend boasting and showing off.

One of the *adab* is to deck oneself in one's best lawful clothes. It is that which the people of the Shari'a consider good on this day, Friday: it is white. The basis is in what Abu Dawud related from the hadith of Abu Hurayra where the Messenger of Allah said, ""If anyone bathes on Jumu'a, puts on his best clothes, applies on scent in his house if he has any, then comes to Jumu'a, and takes care not to step over the necks of people, then prays what was prescribed for him and then keeps silent when the Imam comes out until he finishes his prayer, it will expiate for

what happened in the previous week." Abu Hurayra says "And three days more." He says, "The good actions is multiplied ten times."]

15.7d. Leaving without doing nafila

With us it is preferred that you should leave after finishing the prayer without doing any nafila rak'as in the mosque.

[The Malikis prefer that one who prays Jumu'a leave after finishing the tasbih and the like connected to it and not do any nafila in the mosque, whether Imam or follower. It is is like that by agreement about the Imam. According to one statement about the follower, i.e. it is part of the adab that the one who prays Jumu'a leave after the prayer and not do any nafila is based it being is related that Ibn 'Umar prayed Jumu'a and left and prayed two rak'ats in his house. Then he said, 'The Messenger of Allah used to do this with nafila after them." As for before, it is permitted for the follower rather than the Imam, i.e. desirable.]

15.7e. Nafila before Jumu'a

You can do nafila rak'as before Jumu'a.

[The one who is a follower in the mosque can do nafila before Jumu'a if he wishes as long as the Imam has not sat on the minbar. If he sits, then there is no nafila. When he comes out for the khutba, he does not do nafila. When he enters while he is doing nafila, he makes it quick.]

15.7f. The Imam does not do nafila

The imam should not do any nafila rak'as before the prayer but should go straight to the minbar when he comes in.

[The Imam does not do nafila before Jumu'a in the mosque, i.e. it is disliked for the Imam since the Prophet did not prayer before Jumu'a at

all. Ibn 'Umar said that that is the same whether there is ample time or not.

The recommended *adab* include trimming the moustache and nails, plucking the armpits, shaving the pubes when that is needed, using the tooth-stick and walking to the prayer based on what is reported about that in traditions.]

CHAPTER 16: ON THE FEAR PRAYER

16.1 ITS JUDGEMENT

[Al-Qarafi says that it is possible to define it as doing one of the five fard prayers. Its judgement is obligatory, i.e. obligatory as a sunna. Ibn al-Mawwaz said that it is an allowance and the author of the Mukhtasar confines himself to the truth of the allowance for it, a which is the legal principle of the excuse which allows waht is forbidden, like eating carrion. It is prescribed by an excuse, which is necessity while confirming the existence of the forbidden, which is foulness in carrion. By analogy he says here that it is prescribed for an exuse, which is fear, with the establishment of the forbidden, which is altering the prescibed prayer.

There is no contradiction between its being sunna and its being an allowance because the allowance can become an obligation: like eating carrton for one so compelled. The evidence for the confirmation of its judgement and that it is not abrogated is the Book, the Sunna and consensus. Al-Muzani claims that it is abrogated, but that is rejected. As for its evidence in the Book, it is the words of the Almighty, "When you are with them É" (4:102) In the Sunna, part of it is what Yazid ibn Ruman related with his isnad that a group prayed with the Prophet while a group faced the enemy. He prayed one rak'at with them and then remained standing and they led themselves. Then they went and faced

the enemy and the other group came and he led them in the remaining rak'at and then remained sitting and they led themselves. Then he said the salam with them. As for consensus, a group of the Companions prayed it after the death of the Prophet , including 'Ali ibn Abi Talib, Abu Hurayra, and Abu Musa, and none of the Companions objected to it. It was done on journeys and while resident, singly and in groups.]

16.2. When it is done on a Journey

The fear prayer is done when travelling if there is fear of trouble from an enemy.

[The fear prayer is done when the Muslims fear the enemy, i.e. they believe or think that there is harm from the enemy. What is meant are the unbelievers because fighting them allowed, and there is an analogy made to include revels.]

16.2a. Beginning the Fear Prayer

The imam steps forward with one group leaving the other group to face the enemy.

[As in *al-Mukhtasar*, whether the enemy is in qibla or not. It is like that as opposed to Imam Ahmad who said that if the enemy is in the direction of the qibla, they all pray with the Imam without any division since they see the enemy. It is not a precondition that the two groups be equally divided as opposed to the one who makes that a precondition. The sound version is that each group should have power to resist the enemy. If the enemy can be resisted by half, they are divided in two halves. If they can be resisted with a third, he prays with a third the first rak'at, and with two-thirds in the second. According to the Imam he informs people how it will be done they begin the prayer to avoid confusions since most people are not familiar with it.]

16.2b.The first group

He prays one rak'a with this group and then remains standing while they pray a second rak'a by themselves. They then say the salam and go and stand where their companions were standing.

[He leads the group in prayer and remains on his own and then they leave him. If that happens deliberately before he is on his own, then their prayer is invalid. When he is on his own, he can chose between standing between recitation, supplication or silence. Then they pray a rak'at on their own, say the salam and go to replace the second group in facing the enemy.]

16.2c. The second group

This second group then come and do the takbir al-ihram. The imam prays his second rak'a with them and then does the tashahhud and says the salam whereupon they pray their second rak'a and finish their prayer.

[Then the second group say the ihram and stand behind the Imam who prays the second rak'at. The Imam says the tashahhud and salam in the well-known position. A counter view it is that he does not say the salam, but indicates to the second group to stand for the second rak'at which they owe and pray it, and he says the salam for it. So they catch the salam with him as the first group caught the ihram. The well-known position is that the Imam says the salam and does not wait for the second group who pray with him one rak'at and left the Imam. They make up the rak'at they missed with him and finish.]

16.2d. The case of Maghrib

This is what is done for all the fard prayers except Maghrib when the imam prays two rak'as with the first group and one with the second.

[In Maghrib, the Imam prays two rak'ats and says the tashahhud. After he has said the tashahhud, he stands and remains so according to the well-known position and indicates to the first group to stand. Then they stand and complete their prayer on their own. They say the tashahhud and the salam and leave and take the place of their companions. Then the second group come and say the ihram behind him and he leads them in praying a rak'at and then says the tashahhud and salam. Then they finish the two rak'ats they missed with the Fatiha and sura and then they go. This description which the shaykh mentions is the well-known one from the position of Malik, and he considers it sound that the Prophet did it.

It was two preconditions: the first is that the fighting is permitted, i.e allowed, and it includes the obligatory, like fighting the people of shirk and rebellion, and the permitted, like fighting those who desire property and that those who pray with Imam can leave. If the enemy is such that they cannot resist the ambush, then the second is not permitted when the fear ends in the course of the prayer. They complete it with the quality of security. If there is security after the prayer, it is not repeated. This is the description of the fear prayer when travelling.]

16.3. When it is done while Resident

16.3a.When there is danger

If an imam is leading the prayer in a situation of great danger for a group of people who are not travelling, he prays two rak'as with each group for Dhuhr, 'Asr, and 'Isha.

[When they are resident, the Imam can lead them in the fear prayer. The expression of al-Jallab is clearer than this: "When there is fear in the resident prayer, it is not permitted to shorten the prayer, but it is permitted to divide the people. So the Imam leads one of the two groups in two rak'ats and sits and does the tashahhud and then indicates them to stand to complete it. It is said that he stands when he finishes his tashahhud and waits for them to finish and go and the others to come, standing, silent or making supplication, not reciting. Then he prays the remaining two rak'ats with the second group. Then he says the salam and they finishes what they misses after the salam, It is said that he waits for them to make up what they missed and then says the salam, and they say the salam with his salam, but the first is the well-known.]

16.3B. The Adhan and Iqama

The adhan and the iqama are done for each prayer.

[Travelling and when resident in a group. This is because every prayer is an obligation absolutely in the journey, and when resident.]

16.4. The Fear Prayer done alone

If the situation is too dangerous for even this, then everyone should pray individually as best they can, either on foot or horseback, walking or running, and whether facing the qibla or not.

[If it is too dangerous for a group prayer, then they pray individually as best they can in ruku' and prostration. If they cannot do that, they use gestures to indicate prostration lower than bowing. They can be on foot or mounted on horses or camels, walking or running, facing qibla or not. Then they do not have to repeat it when they are safe, wither in the time or after it. The basis for what he mentioned is the words of Allah Almighty, "If you fear an enemy, then pray on foot or riding," (2:239) and His words, "Remember Allah standing and sitting and lying on your

sides. When you are safe again do the prayer in the normal way." (4:103) So Allah Almighty commands that you pray the prayer in its time according to the situation. In the *Muwatta*', Ibn 'Umar said, "When fear is intense, then pray, standing, and on foot or riding, facing qibla or not." Nafi' said, "I do not think 'Abdullah mentioned that except from the Messenger of Allah."]

NOTE: It is permitted in a state of intense fear to walk a lot and to rush, which is to move the foot, jab with the spear, and shoot the arrow and speech, even if it is a lot if he needs to do that in what is connected to them, like warning someone about someone who is aiming at him, telling him to kill him, glorification and boasting when shooting, or *rajaz* portry if he prepares that to weaken the enemy. Otherwise there is no need for it.

Chapter 17: On the two 'Id prayers and the takbirs on the days of Mina

[This is Fitr and Adha. He clarifies the time for going out to them and how they are done, and clarifies the path by which one returns from them and what he does and what he says when he goes out to them. He also explains the takbirs in the days of Mina and the time in which the takbir occurs on the days of Mina and clarifies what it is recommended to do on the day of the 'Id. He begins with their judgement]

17.1 Its Judgement

Praying the two 'id prayers is an obligatory sunna.

[What is meant is that both of them are confirmed sunnas. So it is a confirmed sunna and is an individual sunna in respect of the one obliges to go to Jumu'a: a legally responsible free man, etc. It is not sunna for a slave, child, madman, women or traveller. The traveller is the one who is

more than three miles outside the land of Jumu'a, but it is recommended for the one who is not commanded to it to pray it. So it is desirable for the slave, woman, child and the one a parsang outside the land of Jumu'a although there is an exception for the hajji traveller at Mina. They are not commanded to establish it nor is it desirable or sunna because the standing at the Mash'ar takes the place of his praying Jumu'a. As for the people of Mina, their praying for it in a group is a blameworthy innovation. There is no harm in a man praying it for himself. It is recommended for someone who misses the 'Id prayer with the Imam to pray it alone. If a woman goes to it, she does not wear clothes meant to attract people's attention nor does she put on perfume out of fear of sedition, i.e. doing that is unlawful is the fear is probable, and it is disliked if it is uncertain. The old woman and others are equal in this.]

17.2. HOW TO DO THE PRAYER

17.2a. The time of setting out

The imam and the people should leave for the prayer early in the morning so that by the time they arrive at the prayer place the time for the prayer has come.

[The time for setting out for the 'id prayer for the Imam and people is after sunrise so when they reach the place of prayer, it is time for the prayer. This is for the one whose house is near. As for the one whose house is far, he leaves before that so that he can catch the prayer with the Imam. This is the clarification of the time of setting out, not the time of the prayer which he mentions: when he arrives, it is the time of the prayer.

Its time is when the sun is the height of one or two Arab spears, which is 12 spans, by the medium span. This is is relation to what the eye sees. In actual terms, it is when the sun has traverses the distance which only Allah knows. It is recommended to go out for it to the place of prayer

except with an excuse. Makka and other places are the same in that. Imam Malik said that the people of Makka prayed in the Masjid al-Haram, i.e. in sight of the Ka'ba. It is an act of worship lacking elsewhere. It is reported that every day 120 mercies descend on this House, 60 for those doing tawaf, 40 for those praying, and 20 for those looking at it.

It is recommended to walk when going to the 'id prayers rather than returning beause he has finished an act of nearness. It is recommended to eat before going to the prayer on the 'Id al-Fitr but not the 'Id al-Adha.]

17.2b. No adhan or iqama

There is no adhan or iqama for the 'Id prayers.

[In the well-known position there is no call for the prayer to gather based on what is found in Muslim from 'Ata'. Jabir reported that there is no adhan on the Day of Fitr before the Imam goes out nor after he goes out and there is no iqama or call in the mosque of the prayer and nothing is done to announce the prayer, like beating a drum, for instance. When there time comes, there is no adhan or iqama or call. The Imam simply begins the prayer.]

17.2c. Two rak'ats recited outloud

The imam leads the prayer in two rak'as, reciting outloud in each of them.

[He leads the people by reaching the place of prayer or the mosque after the nafila when the people are gathered. He prays two rak'ats based on what is in the two Sahih collections that the Prophet prayed it as two rak'ats. It was like that with the khalifs after them.There is no disagreement that he recites outloud.]

17.2d. What is recited

In both he recites the Fatiha and a sura such as *Surat al-A'la* (87) or *Surat ash-Shams* (91).

[According to what is in the *Muwatta*' and Muslim the Messenger of Allah used to recite *Qaf* (87) and *al-Qamar* (54) in Adha and Fitr.]

17.2e. The takbirs

In the first rak'a he says seven takbirs including the takbir al-ihram. In the second he says five takbirs not including the takbir for standing up from sajda.

[He does not raise his hands in any takbir, either in the first or second except the takbir al-Ihram in the well-known position. It is reported from Malik that he recommended it in every takbir. The takbirs are connected to each other except for the amount of the takbir of thos following. It is desirable for him to separate them by that amount. If the Imam says the takbir more than seven in the first or more than five in the second, the follower does not follow him, even if that is the school of the imam. He says the takbir before recitation, even if the school of the Imam is to delay, as the literal evidence of the people of the School indicates. If the Imam forgets a takbir of the 'id prayer, he goes back as long as he has not moved into ruku'. When he places his hands on his knees, he does not go back. If he goes back, some of them deduce that it is not invalid and others deduce that it is invalid. The reason for that is he returns from a fard to a sunna.

If he places his hands on his knees having missed a takbir inadvertantly, he continues and prostrates before the salam. Anyone who comes after the Imam has finished the takbirs and finds him reciting, says that the takbir in the well-known position as opposed to Ibn Wahb. He said it is because he becomes someone who is making up in the judgement of the

Imam. The opinion of the one with the well-known position is that he is not making up by the insignificance of the matter.

It is like that when he catches of the takbirs. He says the takbir with him for what he caught of it and then completes what remains of the Imam beginning the recitation. He does not say that takbir for what he has missed in the takbirs of the Imam. If he finds him in the ruku', he says the takbir al-ihram and owes nothing. If he catches the recitation in the second rak'at, he says five takbirs since the takbir of standing is cancelled for him. When he makes up the first, he says the takbir seven times counting the takbir of standing in them since he missed the takbir al-ihram.]

17.2f. Tashahhud

There are two sajdas in each rak'a and the prayer is completed with the tashahhud followed the salam.

[After the two prostrations comes the tashahhud, i.e. the prayer on the Prophet and supplication. He includes all of it. There is the salam after the tashahhud.]

17.2g. The khutba

The imam then gets up onto the minbar and gives a khutba. He sits before it begins and again in the middle.

[After finishing the salam, the Imam goes up the minbar. So the khutba is after the prayer. The khutba of the 'id is not like that of Jumu'a in respect to time. This is after the prayer and the other is before the prayer. Nor in respect of beginning. This begins with takbir and that with praise and the prayer on the Prophet. It is like it inasmuch as they are both in Arabic and outloud: that is necessary in both. The text of the Mukhtasar states that it is recommended that the khutba be after the prayer based on

what is in the Sahih that the Prophet used to begin with the prayer before the khutba and this was the action of the Rightly-guided khalifs after him. He sits at the beginning and middle of it because they are two khutbas within the whole khutba according to the judgements of the 'id and what is prescribed it in is obligatory and recommended.]

17.2h After the khutba

When it is finished he leaves.

[The Imam then leaves without sitting down after he finishes the khutba if he wishes. He can stay here he he is. It is disliked for him and those following him to do nafila before it and after it if it is done in the desert based on what is in the two Sahih collections that the Messenger of Allah went out on the Day of al-Adha and prayed two rak'ats without not praying before or after them. If it is performed in a mosque, it is not disliked either for him or those following to do nafila before or after it according to Ibn al-Qasim because the hadith was described the desert.]

17.2i. How to return home

It is recommended for him to return by a different route from the one he came by and this applies to everyone else as well.

[The Imam should return by a different route since it is affirmed that the Prophet used to do that. This is true for people because they are the same in this. As the Imam should return by a different route, so those who follow do so since the wisdom applies to all.]

17.3. On 'Id al-Adha

If it is the 'Id al-Ad-ha (sacrifice) the imam should bring his sacrificial animal to the prayer-place and slaughter it there so that everyone else can slaughter their animals after him.

[When the Imam goes to the' id prayer on the Day of Sacrifice, he should bring his animal to the prayer-place and slaughter it so that people will know and they can go and slaughter after him since they are not be permitted to slaughter before him. If someone slaughers before him, it is agreed that he must repeat it. If the Imam does not bring his animal to the prayer-place, they slaughter after he returns to his home and that it enough for them, even if they err and actually slaugher before him.]

17.4 DHIKR ON THE WAY TO THE PRAYER

On both the 'Id al-Fitr and the 'Id al-Adha the imam should do dhikr Allah outloud from the time he leaves his house until he arrives at the prayer-place. Everyone else does the same continuing until the arrival of the imam when they stop.

[It is recommended for the Imam or others to say the takbir when they leave the house. It is understood from his words that he does not say the takbir before he leaves. It is the well-known position. There is the position that the beignning of the time of takbir begins from sunset on the night of the 'Id. That is for the 'Id al-Fitr and 'Id al-Adha. Abu Hanifa said that he does not say the takbir for the 'Id al-Fitr. His evidence is what ad-Daraqutni related that the Prophet used to say the takbir of the Day of Fitr when he left his house until he comes to prayer place. That was the action of the people of Madina as opposed to the Salaf. It is clear that the words of the Shaykh that he says the takbir whether he leaves before or after sunrise. It is stated by Malik in *al-Mabsut*. Some of them transmit that that which Malik says in *al-Mabsut* is that the takbir is from the time of leaving the Subh prayer. Ibn 'Abdu's-Salam, who has most appropriate position, said that that especially applies to Adha to achieve resemblance with the people of the Mash'ar. This takbir is outloud according to most scholars so that he hears himself as do those near him and a little beyond that. Al-Qarafi said that the Messenger of Allah went out on the Day of Fitr and Adha, raising his voice in the

takbir and that continued to be the action of the Salaf. When he reaches the prayer-place, that is the end of the takbir of the Imam.

What is meant by the people doing it is that they do the same as the Imam in beginning the takbir and its description. In the end, they differ from him because they stop the takbir when he reaches its place.]

17.4a. When the Imam says that takbir in the khutba

Every time the imam says the takbir during his khutba everyone else should repeat it to themselves. Otherwise they should remain silent and pay attention.

[Silently. According to the School, a group of the Companions did that. They are silent for other than the takbir according to Malik in the transmission of Ibn al-Qasim because they must listen and it resembles Jumu'a.]

17.5 Saying "Allahu akbar" on the Days of Mina

17.5a. Takbirs after the prayers

During the 'days of sacrifice' you should do the takbir straight after each fard prayer starting with Dhuhr on the day on the 'id and ending with Subh on the fourth day, this being the last of the days of Mina.

[It is recommended for the people to say the takbirs after the fard prayers before the tasbih, praise and takbirs. It is evident from his words that the Imam, the followers, and the one on his own, male and female, are all equal in that. He mentions the fard rather than the nafila, and the present rather than the missed prayer. The takbirs begin at Dhuhr and end with Subh on the fourth day after the sacrifice.]

17.5b. Form of takbir

The form of this takbir which is done after the prayers is: 'Allahu akbar, Allahu akbar, Allahu akbar.'

If you do tahlil and tahmid as well that is good. If you want to do that you say,

'Allahu akbar Allahu akbar la ilaha illa'llahu wallahu akbar Allahu akbar wa lillahi'l-hamd.'

This has been related from Malik. Both the first formula and the fuller version are equally acceptable.

[There are two descriptions of it. One is: 'Allahu akbar, Allahu akbar, Allahu akbar,' and the second is recommended and given. If you wish, you can combine them. This is related from Malik via Ibn 'Abdu'l-Hakam. Ibn al-Jallab recommended it. The first is also related from 'Ali and 'Iyad stated that it is well-known. Both are permitted because it is not established that the Prophet specified either of these two. When the command to do dhikr when leaving for the 'id prayer was mentioned, what is meant by is the dhikr commanded in the words of the Almighty: "Mention Allah's name on particular days," (22:28) and His words, "Remember Allah on the designated days" (2:203) is appropriate to mention on these days. That is clarified when he says:]

17.5c. "Particular days"

The 'particular days' [These are mentioned in the Qur'an.] are the three days of sacrifice. The designated days' are the days of Mina, namely the three days after the 'id.

[The designated are for the stoning mentioned in the ayat. They are the second and third days of the Day of Sacrifice. The first of the day of sacrifice is particular and not designated. The fourth is designated and not particular. The two middle days are both particular and designated.]

17.6. PREPARING FOR THE PRAYER

17.6a. A ghusl

It is good to do ghusl for both the 'ids but it is not necessary

[It is recommended to have a ghusl, in the same form as the ghusl for janaba. It is asked of every one with discrimination, even if not legally responsible nor intending to go to the prayer. It is not necessary as sunna. The best time is after the Subh prayer. It is enough if he washes before Fajr.]

17.6b. Perfume and best clothes

and it is recommended to use perfume and to wear your best clothes.

[Perfume is recommended for men whether or not they go to the prayer. If women go to the prayer, it is not permitted for them to use perfume, and there is no difference between old woman and others. There is no harm is they do not go out. It is recommended for men to wear their best clothes, which means new, even if they are black. All the evidence for that is in the sunna. In the hadith of Ibn 'Abbas, "The Prophet used to bathe on the Day of Fitr and Adha and put on perfume and encouraged that and he ordered us when we went to the place of prayer to wear the best clothes we had."

Chapter 18: On the Eclipse Prayer

[Clarification of its general description in the solar and lunar eclipses. The terms *kusuf* and *khusuf* are synonyms and both used for the sun and moon. It is said that there is a difference between them: *kusuf* is when the light changes and *khusuf* is when the light goes entirely. The moon loses all its light, but the sun is not like that, and so *khusuf* is used of the moon and kusuf of the sun. Their evidence is in the Sunna where the Prophet said, "The sun and moon are not eclipsed for the death or life of anyone. When you see that, remember Allah." One variant has, "then pray." The eclipse prayer is sunna.]

18.1 The Solar Eclipse

18.1a. Its judgement

The eclipse prayer is an obligatory sunna whenever there is an eclipse of the sun.

[It is agreed that the Solar Eclipse prayer is a confirmed sunna. There is disaagreement about the lunar eclipse. The two famous positions are that the lunar eclipse prayer is recommened as al-Ujhuri stated. The solar eclipse prayer is done in a group or singly. It is better in a group.]

18.1b. How it is done: first recitation

The imam goes to the mosque and begins to lead the people in prayer without either an adhan or an iqama. He recites silently a very long piece of Qur'an such as Surat al-Baqara. Then he goes into ruku' for the same amount of time. Then he stands upright again saying 'sami'a llahu liman hamidah.'

[When the sun is eclipsed, wholly or partly, the Imam goes to the mosque, and when he arrives, he leads the people in prayer. There is no precondition of number in it, like Jumu'a. There is no adhan or iqama or statement, "The prayer is gathered" based on what is transmitted of the action of the Prophet. He says the takbir to begin as in all prayers. Then he begins to recite silently the Fatiha and then a long bit of Qur'an because the Prophet did that. It is defined as being like *Surat al-Baqara*. The School is that it is recommended to recite *al-Baqara* in the first standing of the first rak'at after the Fatiha. Opposite is the School that "like" indicates that it is desirable and this sura is not particular. What it is meant is the length. Then he does ruku' for the same length of time, and then comes up. The Imam says "Allah hears whover praises Him" and the follower says "Our Lord, and praise is Yours."]

18.1c. How it is done: second recitation

Then he recites another piece of Qur'an slightly shorter than the first. Then he goes into ruku' again for the same amount of time as he spent reciting. Then he once more stands upright saying, 'sami'a llahu liman hamidah.'

[Then, in the well-known position, he recites the Fatiha. which differs from Ibn Maslama who says that he does not recite. The reason for that is that it is two rak'ats and the Fatiha is not repeated twice in the same rak'at. He recites less than he did in the first standing. It is recommended that it be *Ali 'Imran*. In his second ruku' he says the tasbhih and does not recite or make supplication.]

18.1c. How it is done: two sajdas

Then he does two full sajdas.

[He does them with tranquillity. There are two positions about whether they are long like the ruku'. The most well-known is the first. The second is in the *Mukhtasar* of Ibn 'Abdu'l-Hakam. It seems probable.]

18.1d. How it is done: second rak'at

After this he stands up again and recites another piece of Qur'an slightly shorter than the previous one and then goes into ruku' for the same length of time. Then as before he stands upright again and recites one more slightly shorter piece of Qur'an which is followed

by ruku' for the same amount of time as the recitation. He stands back upright again and then does two sajdas as before.

[He recites the Fatiha and then a shorter piece, and it is recommended that it be *Surat an-Nisa'*. Then after the third standing, he goes into ruku' in which he glorifies and does not recite or make supplication. Then he comes up and then recites the Fatiha in the well-known position and then a shorter sura than the third, and it is recommended that it be be *Surat al-Ma'ida*.]

18.1e. How it is done: tashahhud

Finally he says the tashahhud and then the salam.

[This is the description which the shaykh mentioned. Al-Fakhani says it is our School and the school of the majority. Its evidence are sound explicit hadiths on this previous manner which our author described. Abu Hanifa say that he prays two rak'ats like other nafila prayers.]

18.1f. Can be done at home

If you like the prayer can be done in this way in your own house.

[The eclipse prayer can be done at home when that does not lead to abandoning it in the group. If doing that leading to not doing in the group, then it is disliked to pray it at home. He then goes on to the lunar eclipse.]

18.2 The Lunar Eclipse

18.2a No group prayer

If there is an eclipse of the moon there is no group prayer.

[This is in the well-known position. It is transmitted from al-Qarafi that the prohibition is one of the nature of the haram. As for the group, Malik and Abu Hanifa forbid it because the Prophet did not gather a group for the lunar eclipse. Ashhab and al-Lakhmi allow it.]

18.2b. How it is done

When it happens people should pray individually, reciting outloud as for any other nafila prayer at night.

[People pray in their own in their houses in the well-known position of the School. An opposite position is found in the report that in *al-Majmu'a* that Malik said that they pray individually in the mosque. Recitation is outloud as for other nafila, since it might be imagined that people pray in the form of the nafila without specific intention. It is possible that it has the form of of the solar eclipse. We read in *at-Tahqiq*, "The apparent meaning of the words of Malik is that it does not need a specific intention like other nafilas as opposed to the solar eclipse which needs a particular intention. What is desired is obtained by two rak'ats

only although it is desirable to pray groups of two rak'ats until it is finished. It's time is the entire night. Its is not done when dawn comes.]

18.3. The Khutba after the Prayer for the Solar Eclipse

18.3a. No formal khutba

There is no formal khutba after the prayer for the eclipse of the sun

[There is no khutba before or after the eclipse prayer because a group of the Companions transmitted the description of the Eclipse prayer and none of them mentioned that the Prophet gave a khutba in it. As for what is related from 'A'isha that the Prophet prayed the eclipse prayer and then went and addressed the people and praised and lauded Allah, it means that he spoke some words which contained the praise of Allah and the prayer on the Prophets and admonition as would be found in a khutba.]

18.3b. Informal admonition

but there is no harm in the imam taking the opportunity to admonish and remind people.

[He reminds people about the calamities which happen in this world because of disobeying Allah. It differs from what is before it because the khutba has no meaning except this. It is not the particular form of the khutba. The *Mukhtasar* says that reminding is only recommended.]

CHAPTER 19: ON THE RAIN PRAYER

[Clarification of the time when it is done, which is in the early morning until the sun declines. He clarifies the place where it is done, which is the desert. Its name, *istisqa'* linguistically means to ask for drink and in the Shari'a it is to ask Allah for water beause of drought which has occured.]

19.1 ITS JUDGEMENT

The rain prayer is a sunna which is acted upon.

[The Rain prayer is a sunna which it is confirmed should be prayed, and is not abandoned. This differs from Abu Hanifa who says it is not prescribed. The evidence for its being prescribed is what is in the two *Sahih* collections: that the Prophet went out to the place of prayer and prayed for rain from Allah. He faced the qibla and reversed his cloak and prayed two rak'ats in which the recitation was outloud. There is no disagreement that the supplication is after changing the cloak and after facing the qibla and after the prayer.]

19.2 WHO PERFORMS IT

The imam goes out for the prayer

[One variant has the "Imam and the people". It appears to be general, but that it not the case. They are divided into those who go out for it and those who do not go out for into three groups. One group go out to it by agreement: they are the legally responsible Muslims, even if they are slaves or women who normally go out and children with understanding. One group do not go out for it by agreement: young women and menstruating women. There is a group about whom there is disagreement: they are the children who do not understand, young

women who are not tempting and the people of the dhimma. The well-known position for other than the people of the dhimma is that they do not go out. The well-known position for the people of the dhimma is that they go out with the people, not before or after them. They do not mix with the people, but are to one side.

It is recommended that the Imam command the people to repent and avoid injustices. That is before they go to the place of prayer because sins are a cause for misfortunes. Allah Almighty says, "Whatever strikes you of an affliction is by what your hands earned." (42:30) The reason for denying the answer, as has come in hadith was made clear by al-Fakhani when he says, "The dusty dishevelled slave stretches out his hands to the heaven, 'O Lord, O Lord' while his food is haram, his clothing is haram and he is nourished by the haram, so how can he be answered like that?" He commanded them to give sadaqa and charity. It is recommended to fast thee days before the rain prayer and they go out in ragged clothes and humility with transquility and gravity. The well-known position is that the Imam says the takbir when they go out to it.]

19.3 ITS TIME

in the early morning as for the 'id prayers.

[It is probable that the resemblance is in the prayer-place, i.e. the Imam goes out to the prayer place as he goes out for the 'id, i,e. for other than the people of Makka, They pray for rain in the Masjid al-Haram as they pray in it. Then he says, "morning" to clarify the time of going out.]

19.4. HOW IT IS DONE

19.4a Two rak'ats

He leads the people in two rak'as

[When the Imam reaches the prayer-place, he leads the people in only two rak'ats by agreement of those who say that it is prescribed. It is permitted to do nafila before and after it. Ibn Habib transmitted that that it disliked from Ibn Wahb by analogy with the 'id prayer. The one who says that it is permitted distinguishes the rain prayer as being intended to seek nearness by good actions to remove punishment, which is not like the 'Id prayer.]

19.4b. Recitation

in which the recitation is outloud. He recites *Surat al-A'la* in the first rak'a and *Surat ash-Shams in* the second. He does two sajdas and one ruku' in each rak'a and finishes with the tashahhud and the salam.

[It is agreed that the Prophet recited outloud in them. In the first rak'at he recites the Fatiha and *Al-A'la* (87) in it, and the like of that in the second with the Fatiha and *ash-Shams* (91). These two suras are mentioned because the Prophet recited them in it. There are two prostrations in each rak'at. There is one ruku' is avoid being like the eclipse prayer. When he finishes the final prostration, he does the tashahhud and salam.]

19.5. THE KHUTBA

He then turns and faces the people. When everyone is quiet he stands and, leaning on a bow-shaft or staff, gives two khutbas sitting down between them.

[It is desirable while he is sitting on the earth. He does not ascend a minbar because this situation demands humility. When they are still in their places, it is recommended that he stand and begin to speak. The two khutbas in the Rain Prayer resembles that on the two 'ids in that they are after the prayer and he sits in them at the beginning and second. That is what the Prophet did it.]

19.6. Changing The Cloak

When he finishes he faces the qibla and then turns his cloak inside out, putting what was on his right shoulder on his left shoulder and vice versa. He does not turn it upside down. Everyone else does the same except that he is standing and they remain seated.

[When he finishes the khutba, he faces the qibla where he is and changes his cloak, for luck, to indicate the change of their state from hardship to ease. This is what the Prophet did. He does not turn his cloak upside down. Sanad said that because that is not recorded from him nor from anyone after him. The description of turning is to put the lower edge on the top and the top on the bottom, based on what is in that of bad luck in respect for His words, "We turned the place completely upside down." (15:74) As for changing what is on the right to the left, it is only possible by turning it inside out. Then the men but not the women do the like of that of the Imam, if they have cloaks and change their cloaks while seated. The Imam changes it while standing.]

19.7 Supplication

Then, while like this, the imam makes du'a' after which he and everyone else leave.

[This is done while he is standing facing qibla. It is done outloud and the supplication is of medium length, neither long nor short. Part of the Prophet's supplication was, "O Allah, give water to Your slaves and animals and spread your mercy and give life to your dead land." It is recommended for the one who is near to the Imam to say "Amen" after his supplication and to raise his hands with the palms towards the earth, looking at the sky. Then according to the well-known position they leave. It is said that he returns facing the people, reminding them and supplicating, and they say Amen to his supplication and then go.]

19.7a No takbirs

There are no special takbirs in this prayer or in the eclipse prayer. There is just the takbir al-ihram and the normal takbirs for going into ruku' and for going into sujud and coming back out of it. There is no adhan or iqama for the rain prayer.

[There is no takbir in the khutba. Takbir is replaced with asking forgiveness. He says, "I ask the forgiveness of Allah the Immense. There is no god but Him, the Living, the Self-Subsistent, and I turn to Him." In the two khutbas, he often says, "Ask for the forgiveness of Your Lord. He is Forgiving and will send the rain on you in torrents, support you with wealth and sons, appoint gardens for you, and make rivers flow for you."]

Chapter 20: On what to do when someone is at the point of death and on washing the dead, shrouding them, embalming them, carrying them and burying them

20.1 Attendance At Death

20.1a. Turning the person towards qibla

When someone is at the point of death, it is recommended to turn them so that they face qibla and to close their eyes after they have died.

[When the signs of death appear in a person and it is certain that he will die, he is turned: that is when the eyes become fixed. It is disliked to do that before. What is meant by facing qibla is to put him on his right side with his chest towards the qibla. It is said that that at that point one says, "In the name of Allah and on the sunna of the Messenger of Allah and peace be upon the Messengers and praise belongs to Allah, the Lord of the Worlds. Let those who work, work for the like of this (i.e. death) The like of this is not denied." It is also recommended to tie the jaw with a bandage, bind the limbs gently, lift him from the earth, cover him with a cloth, place something heavy on his abdomen like a sword, and to recount the shahada to him.]

20.1b. Saying the shahada

The shahada should be said in the presence of the dying person so they will be reminded of it.

[This is done before he actually dies. The previous things are for the person who has died. This instruction is that someone sitting with his says so that he can hear, "*La ilaha illa'llah. Muhammadun rasulullah.*" This is done when the signs of death appear. He is taught so that he will remember them in his mind and die acknowledging them in his consciousness. When the dying person says them, they are not repeated to him unless he is speaking a foreign language and then they are repeated to him so that that will be the last of his words and he will enter the Garden by what is related: "If the last words of a person are '*la ilaha illa'llah,*' he will enter the Garden." One does not say, "Say: '*la ilaha illa'llah*' because he might be in a conflict with Shaytan who says, 'Die on the *deen* of the Jews or Christians,' and he says 'No,' and then people will have a bad opinion of him.]

20.1c. Purity of the body

It is better than the body and what it is on are free of impurity. It is better that menstruating women or anyone in a state of janaba do not come near someone who is dying.

[It is desirable that what is on and under the body and the body itself be pure, if that is possible. The reason is that the angels will be present with him. It is recommended that menstruating women or those in janaba do not come near the dying person because the Prophet said that the angels do not enter a house in which there is a menstruating woman or someone in janaba. It is desirable that no dogs or images or anything that angels dislike be brought near him.]

20.1d. Reading *Sura Yasin*

Some of the 'ulama' recommend reading *Surat Yasin* at the bedside of the dying person although according to Malik this was not the usual practice.

['Some' means Ibn Habib. It is read at his head or feet or elsewhere. *Surat Yasin* is read because it is related that the Prophet said, "There is no one who dies who has *Surat Yasin* read at his head but that Allah makes it easy for him." This recitation is not mentioned by Malik. He considers it disliked, and that *Yasin* is not singled out. He considers it disliked to recite *Yasin* or any other sura when a person is dying, after his death or at his grave. It is also disliked to instruct him after he has been placed in the grave.]

[Khalil says it is disliked to recite Qur'an beside a dying person and to recite it beside the dead person or at his burial. It is also disliked to burn aromatic substances.]

20.1e Weeping

There is no harm in weeping when someone dies although self-control and patient endurance are better if that is possible.

[There is no harm in weeping when the person is dying or after his death. Self-control in what has happened is good and better if possible. He is helped in that by looking at the reward for afflictions in ayats and hadiths which are related about that. One is them is the words of the Almighty, "But give good news to the steadfast: those who, when disaster strikes them, say, 'We belong to Allah and will return to Him.' Those are the ones who will have blessings and mercy from their Lord." (2:155-156) The blessings and mercy of Allah are not equal to any of the things connected to this world. In hadith: "Whoever says that and says with it, 'O Allah, reward me for my loss and replace it with better than it,' Allah will do that for him."]

20.1f. Wailing is forbidden

and crying out and wailing are forbidden.

[Based on the words of the Prophet, "The one beats his cheek and tears his garments and calls out with the call of the *Jahiliyya* is not one of us." In a variant of Muslim, "When the wailer does not repent before she dies, she will be raised up on the Day of Rising with trousers of pitch and a shirt of mange.]

20.2 Washing The Body

20.2a. Number of times

There is no fixed limit to the number of times you wash a dead body. The body should be thoroughly cleaned and the number of times it is washed should be odd.

[Except for the martyr in battle according to Malik, but what is desired is that the body be clear and that it be washed an odd number of times. The reply is that the limit is that which should not be exceeded or decreased, and the odd is three, five or seven. In short, the cleaning defined by the number three does not have the limitation of a particular number since it is known that the odd contains three, five, etc. It is recommended that the washing be odd except not only one time, which is not desirable. The principle of the sunna washing is based on what is well-known and it does not need an intention. It is also said that it is obligatory and confirmed, i.e. on society as a whole, which is preferred, and it is done as an act of worship, not for cleanness in the well-known position. It is is said that it is for cleanness. It is clear that the result of the dispute is that when a Muslim man dies, and there is no Muslim with him but there is a dhimmi with him, according to the statement that it is worship, the dhimmi does not wash him because he is not one of the people of

worship. According to the second one, that it is for cleanness, the dhimmi washes him.]

20.2b. What is used for washing

It should be washed with water and sidr (lote tree leaves) and in the last washing camphor should be added to the water.

[Al-Fakhani says that it means that all of the scholars say that crushed lote leaves should be dissolved in water and then the body of the corpse rubbed with it. It is like that in every washing except the first. In it there must be clear water for the obligatory ghusl. In the last washing it is recommended to add camphor because the Prophet commanded that if there is no camphor, then another perfume takes its place. When there is no lote, then saltwort and the like is used instead.]

20.2c. Covering the private parts

During the washing the body's private parts should be kept covered.

[When the dead person is stripped to be washed, the private parts should be covered. What al-Lakhmi understands from the *Mudawwana* are the actual private parts in particular. The accepted position is that it is what is between the waist and the knees, as is transmitted from Ibn Habib. Al-Baji transmitted from Ashhab that the chest and face are covered, fearing change which could give rise to bad opinion.]

20.2d. Cutting nails and hair

The nails should not be cut nor should the hair be shaved off.

[If it is done, it is disliked to do this and they are included with him in his shroud.]

20.2e. Squeezing the stomach

The stomach should be gently squeezed.

[It is recommended to do this before washing if it is needs. It is done gently lest any thing of it come out and soil the shroud.]

20.2f. Wudu'

It is good if wudu' is done for the dead person although this is not obligatory.

[It is recommended and does not require an intention because he is doing it for someone else. It is not obligatory, which indicates that there are two positions in the question. It indicated the first when he say it is good, and he rejected the second by saying that it is not obligatory, even if something impure issues from him after washing. It is removed and he is not washed again nor is wudu' done for him. Only the place is washed.]

20.2g. Position of the corpse

It is better if the body is turned on its side for washing although it is acceptable to wash it in a sitting position.

[It is better than sitting it up because it is easier to clean and kinder to the corpse. He first puts him on his left side and then washes the right side, and then turns him on the right side and washes the left side. This is recommended although sitting is allowed. 'Abdu'l-Wahhab prefers it because it he more able to wash throroughly.]

20.2h. It is good for a spouse to wash

It is good for a husband or wife to wash their dead partner although it does not necessarily have to be them that do it.

[There is no harm here if another is chosen. Either of the couple has priority in the washing of the one who has died over other relatives so that he is adjudged to be able to do it if the relatives dispute about it. The basis for it is what is mentioned about 'Ali washing Fatima and Abu Bakr being washed by his wife.]

20.2i. Who washes a woman without relatives or other women

If a woman dies on a journey and there are no other women present nor any men of mahram status then a man should do tayammum for her, wiping her face and hands.

[If a Muslim woman dies and there are no Muslim women or male relatives present, but there are unrelated men, a man does tayammum for her, wiping the hands only to the wrists because they are not part of '*awra* and so it is permitted to look at them without lust. Az-Zurqani said, "It is permitted for a unrelated man to wipe her when she is lifeless because of the rarity of pleasure here. The one who prays only does tayammum after finishing the tayammum of the corpse because it is the time of the prayer."]

20.2j. Who washes such a man

Similarly if the dead person is a man and there are no other men present nor a woman of mahram status, then a woman should do tayammum for him, wiping his face and his hands and arms to the elbows. If there is a woman of mahram status present she should wash his body, keeping his '*arwa* covered.

[When there is a woman who is a relative present, she washes him, covering the 'awra according to one of two interpretations in the *Mudawwana*. It is sound because his body is not forbidden for them to see. So it is permitted for her to look at a male relative except for what is

between the waist and knees. Touching is analogous with looking by necessity. The other interpretation is that his entire body is veiled.]

20.2k. When a woman's mahram is present

If a woman has died and there is a man of mahram status present he should wash her through a cloth covering her whole body.

[When there is no woman with her, a relative or in-law washes her according to what is in the *Mudawwana*. Ashhab says that he does not wash her, but performs tayammum. The form of washing is that water is poured on her and he does not touch her body with his hand either above or under the cloth.]

20.3 SHROUDING

20.3a Number

It is recommended for the body to be shrouded in an odd number of lengths of cloth, either three, five or seven. Any waist-wrapper, shirt or turban that is put on the body is counted as one piece of cloth. The Prophet, may Allah bless him and grant him peace. was shrouded in three lengths of white sahuli cloth, each layer being well wrapped round him, may Allah bless him and grant him peace.

[This is with the exception of the martyr in battle. He is silent about what is obligatory, which is a garment which covers the entire body. It is clear from his words that seven is recommended for both men and women. It is in *al-Mukhtasar* and it is what is accepted. Seven is recommended especially for woman, and more than five for a man is disliked. Since he feared that that would be limited to what is used to wrap the body, he removed the possible misconception by saying that that includes garments. Then he indicates the recommendation of the

odd number based on the Prophet's example. "Sahuli" refers to a type of cotton which is washed or it refers to a town in Yemen.]

20.3b. Just a shirt and turban

There is no harm in a dead man being dressed in a shirt and a turban.

[No harm here means it is better to not to do it. There is a text in the *Mukhtasar* that it is recommended, i.e. each of them is recommended, not that it is one recommendation. The turban is recommended for a man, and one leaves the end of it an arm's length to put over his face. A woman has no turban. A head covering is put on her head and the end of it left to put on her face. The best shroud is white cotton or linen. But cotton is better because it is more concealing and because the Prophet was shrouded in it. It is disliked to use yellow or green scent and every colour except white. The place of dislike is when it is posssible to have white. Otherwise it is not. Shrouding, the perfume and preparing it is advanced before the debt - except for the pawn and bequest. However, if there is a pledge against the debt, it is permitted to the pledgee. The pledged debt is advanced over the cost of preparation.]

20.3c. Use of perfume

The body should be perfumed, with the perfume being put between the layers of cloth that make up the shroud and also directly on the body and the places which touch the ground in sujud.

[It is recommended to perfume the corpse with perfume which is not forbidden and is customary. It is recommended to dry the body with a clean rag before it is perfumed, and it is recommended that its clothes be fumigated an odd number of times, three, five, or seven and the like. *Hanut*, which is perfume like musk, amber or camphor is put between the shrouds, i.e on each layer except the top, and on the body, like the

eyes, ears, nose, mouth and nostrils by spreading it on cotton and putting it on his eyes, ears, nose and orifices without putting it in, and also on the places of prostration: brow, neck, knees, hands and toes of the feet.]

20.4 MARYTRS, SUICIDES AND EXECUTED CRIMINALS

20.4a. Martyrs

A *shahid* on the battlefield is not washed nor is the prayer done for him. He is buried in his clothes.

[A martyr is anyone who dies by weapons in battle against the unbelievers when there is a battle. Similar to being killed by actual weapons is dying because of being trampled by a horse, falling from a camel, or attacking the enemy and falling into a well or falling from a precipice. The apparent meaning of his words is that he is not prayed over if he is killed by the enemy in the land of Islam. That is the well-known position. Opposite it is that he says if he is in the land of Islam, he is washed and prayed over because his degree is less than that of the martyr who has entered enemy territory. If he is carried live from the battle and then dies, the well-known position is that he washed and prayed over, even if the fighter is wounded when he is removed, unless he is on the point of death and does not eat or drink. This is the summary of the words of some of the commentaries of Khalil. But the School is that the one who is wounded is not washed whether he is removed unconscious or not, except the one who has fainted.

As he is not washed or prayed over, he is buried his clothes with leather socks and a cap and a belt of little value and it is permitted, or a ring of little value. But not the armour and weapons: they are taken from him. He does not have anything else. If his clothes are not enough to cover him, they are increased so that he is will covered as obligatory. Similarly it is obligatory to shroud him when he is found naked. The martyr is not washed by the words of the Prophet, "Wrap them in their garments. The

colour is the colour of blood and the scent is the scent of musk," meaning that with Allah the smell of blood is pleasing like the smell of musk. For that reason, he is not washed and the blood is not removed from him. He is not prayed over by what was said to Malik, "Do you convey that the Prophet prayed over Hamza and said 50 takbirs?" He replied, "No, and he did not pray over any of the martyrs." It was in the *Muwatta*' that the Prophet led the people in prayer over him as individuals and did not lead anyone in the prayer.'Iyad said the sound position which the majority hold is that the prayer of the Prophet was a real prayer, not only supplication. It is said that what is meant by the prayer over him is supplication only. Al-Baji said its reason is that the Prophet was better than every martyr whose excellence dispenses with the prayer over him. The martyr cannot be washed since that would remove the blood which must remain because of its goodness and because it is a token of his martyrdom in the Next World.

20.4b. Suicides

If someone kills himself, the prayer is done for him.

[This is whether it is suicide or an accident. His wrong action is his. The people of virtue pray over him when it is accidental, but not when it is deliberate.]

20.4c. Those who have executed

The prayer is also done for someone killed by the imam as a hadd punishment or because they have killed someone. The imam himself does not participate in the prayer.

[When someone has been killed by obligation, as for abandoning the prayer on account laziness and the highwayman, and those who have to be stoned for sodomy or adultery, or whom the Imam has killed for a *hadd* or in retaliation, neither the Imam nor the people of virtue pray

over him. The Imam and the people of virtue do not pray over him so that that will be a deterrent to others against doing the like of what he did when they see the Imams and people of virtue refuse to pray over him.]

20.5 Bringing the Dead to the Grave

20.5a. No incense and walking in front

Incense should not be burned during funeral processions and it is better to walk in front of the bier.

[Incense is not used because it involves fire and the Prophet forbade that. It is better for men to walk in front than to walk behind. If they ride, it is recommended for them to go behind the bier. The evidence for the first is what is related by the people of the Sunan from the hadith of Ibn 'Umar who said, "I saw the Messenger of Allah, Abu Bakr and Umar walk in front of the bier." The evidence for the second is what Abu Dawud related that the Prophet said, "The rider travels behind the funeral."]

[Khalil: It should not be too slow. Women go at the very end. The bier should not be brought into the mosque.

20.5b. The body is placed on its right side

The body should be placed in the grave on its right side

[It is recommended that the corpse be placed on its right side facing qibla because it is the noblest of positions. The right hand is extended over his body and the head put level with earth. Earth is put behind and in front of it so that it does not move. The binding of the shroud is undone. If he cannot be put on his right side, then he is put on his back with his face towards qibla. If that is not possible, then however is

possible, If his direction shifts in the burial, as when it is put not to qibla or on the left side and not too long has passed, that is remedied and he is moved. A long time means when the burial is complete.]

20.5c. Clay and straw placed over the corpse

and slabs made of clay and straw should be laid over it.

[After the dead person is placed in the grave, then bricks are put over him. That is based on the transmission that the Prophet made the grave of his son Ibrahim and put bricks on the grave. It is recommended to plug the gaps since he commanded that about his son.]

20.5d. What is said

When this is done you should say, "O Allah, our companion is now with You. He has left this world behind him and is in need of what is with You. O Allah, make his speech firm when he is questioned and do not test him in his grave beyond what he can bear. Grant that he may be in the company of the Prophet, Muhammad, may Allah bless him and grant him peace.

[When the corpse is in the grave or those present have buried him, and the bricks are in place then this is said.]

[Khalil says that those who are next to the grave throw in handfuls of earth)

20.6 Monuments

It is disliked to build anything on graves or to whitewash them.

[It appears that this is absolute, but that is not the case. There are details about this. In short, what is disliked is when it is in wasteland or owed so

that the people of corruption cannot resort to it nor is pride intended by it and so distinction is intended by it. It is also unlawful in *waqf* land absolutely, like al-Qarafa. He said in at-Tahqiq, "It is obligatory for the governor to command that it be demolished." Whitewashing is also disliked because it is found in Muslim that the Prophet forbade that the grave be whitewashed and that it be built on or sat on.]

[Khalil: the tumulus should not be raised more than one hand above the trench and should be shaped like a camel's back although some dislike this and say it should be flat. There should be no fence around the grave. A tombstone is permitted as a market or a piece of wood, but this must not have any writing with the name, date or death, qualities of the person, etc.]

20.7 Burying An Unbelieving Father

A Muslim should not wash his father if he is not a muslim nor should he put him in his grave unless he is afraid that his body will remain unburied in which case he should cover the body and then bury it.

[Because washing is only done for the one over whom the prayer is said. An unbeliever is not prayed over and so there is no point in washing him. The prohibition is one of forbidding, and applies even more so to others than his father. Nor does he put him in his grave because his filial duty is removed with the death of his father. This is unless he fears that he will be left unburied. Then it is a duty to bury the body, and there is no difference between a unbeliever with whom we are at war and others. This does not only apply to the father, but the obligation is general, extending even to the stranger. He is not made to face qibla because he is not one of its people.]

20.8 NICHE IN THE GRAVE

According to the people of knowledge the lahd-type (niche) grave is better than the shaqq-type (a simple trench). A lahd-type grave is one in which, after you have dug the basic trench, you dig out a place for the body at the bottom of the side which faces qibla so that the body is protected by an overhang. This should be done provided that the earth is firm enough and will not crumble or cave in. This was how the grave of the Prophet was dug, may Allah bless him and grant him peace.

[This is based on the tradition, "The lahd is for us and the shaqq for others" and because Allah Almighty chose it for His Prophet. If the ground is too soft or sandy, then the shaqq is better.

[Khalil: Graves should not be too deep, not more than a cubit.]

Chapter 21: On the Funeral Prayer and the Supplication for the Dead

[Ibn 'Arabi says that the position of Khalil is that *jinaza* is the bier and *janaza* is the dead person. Ibn al-Asma'i said the opposite. Al-Farra' said that they mean the same. Ibn Qutayba said jinaza is the corpse. Al-A'rabi said that jinaza is the bier. It is derived from *janaza*, when something becomes heavy, or from covering something and so it is appropriate.

The chapter also clarifies the judgment of the prayer on the dead person which is *fard kifaya*. He can be prayed over at any time, day or night, except sunrise and sunset: it is forbidden at those times. It is disliked in the disliked time. In the first case it is repeated as long as he has not been buried. It is not repeated in the second at all. The place of that is when change is not feared for him. Otherwise the prayer is permitted without dispute.

Every dead Muslim is prayed who was not a martyr in battle. There is no prayer over someone who has already been prayed over already. The prayer over him is led by the one he commanded to do it. Such a person is preferred to the local authority if he is known to be good and the blessing of his supplication is hoped for unless it is know that there was enmity between him and the deceased. Then it is not permtited to designate him.]

21. 1 The Pillars of the Funeral Prayer

[The pillars of the janaza prayer are five:

1. Standing. If they pray sitting, it is not allowed except on account of a valid excuse (like illness). This is according to the position that it is obligatory. The evidence for the obligation is understand from His words, "Do not ever pray over any of them who dieÉ" (9:84)

based on the understanding which is opposite thhe judgement of what is said: it is that the obligation of praying over the believers is not contrary to the judgement articulated, which is lack of respect of the prayer over the believers.
2. The ihram, i.e. the intention
3. The salam.
4. Supplication.
5. The takbirs.]

21.2 HOW TO DO THE PRAYER

21.2a. Four takbirs

The janaza (funeral) prayer contains four takbirs.

[Since the Prophet did that. That is since it was confirmed that in the last prayer that the Prophet prayed, he said four takbirs. If he says the salam after three out of forgetfulness and then remembers soon after, he returns with only the intention, and he does not say that takbir since that would increase the number. He says that the takbir and count it as one of the four. Ibn 'Abdu's-Salam said that. If the Imam does an extra fifth,the followers says the salam and do not wait for him. Ibn al-Qasim related that. Ibn Harun opposed that, saying that when the Imam stands for the fifth out of forgetfulness, they wait for him so that they say the salam with his salam. Al-Mawwaq said that he heard Ibn al-Qasim say that if the Imam is one of those who say the takbir five times, the followers stop after the fourth and do not follow him in the fifth. It is understood that if he is one of those who do not say five takbirs, but he says a fifth inadvertantly, then the follower does not stop, but he remains still. When the Imam says the salam, the follower says his salam. Malik says that in *al-Wadiha* as does Ashhab.]

21.2b. Lifting the hands for the first takbir

You lift your hands for the first takbir and there is no harm in doing so for each of the others.

[This is one of four statements and it is made by Ashhab. He said that he raises his hands in the first and can choose in the rest. If he wishes, he raises them. If he wishes, he does not raise them. The second position is that he raises them in every takbir. This is in the *Mudawwana* and Ibn Habib preferred it. The third, which is also in the *Mudawwana*, is that he raises them only in the first takbir, and raising them in the others is contrary to the first. At-Tunisi preferred it. The fourth is that he only raises them in the first and not others. It is more well-known than raising them in all.

[It was already stated that the supplication is one of the pillars of the prayer, and so the prayer is repeated if it is omitted. There is disagreement about the supplication after the fourth. Sahnun affirmed it by analogy with the rest of the takbirs. The rest of the people opposed him by making an analogy with lack of recitation after the fourth rak'at because the four takbirs take the place of the four rak'ats, i.e. the social form of the four takbirs with what they contain of supplication takes the place of the four rak'ats, and as there is no recitation after the fourth rak'at, so there is no supplication after the fourth takbir. It does not mean that each takbir is in the position of a rak'at, which it observed alone or with the supplication. The probable meaning of the Shaykh is that he can choose.]

21.2c. Supplication after the fourth rak'at

If you like you can make a du'a after the fourth takbir before the salam or if you like, you can say the salam directly after the takbir.

[A third position.]

NOTE: The shaykh did not speak about the intention, which is one of the pillars. It is that he intends with his heart to pray over this deceased persob while remembering that it is a *fard kifaya*. There is no harm that he neglects the final point. It is valid as it is valid if he prays over him believing that it is praises and there is remembrance, and the reverse. That is also the case if he thinks it is someone and then it becomes evident that it is someone else because his intention was the person present before him. This is not the case when there are two or more on the bier and believes that there is only one. It is repeated by all since the one was not specific. Otherwise, it is repeated over the one who was not specified whom he intended. If he intends one particular one and then it becomes clear it is two or more, and the one he named was not of them the one, then it is repeated over all. If he intends the prayer on whoever is in bier while he believes it to be a group and then it is clear that it is one or two, it is sound because one or two are part of a group.

21.2d. Where the Imam stands

The imam stands opposite the middle of the body if the dead person is a man and opposite the shoulders if it is a woman.

[It is recommended that the Imam stand here, and it is the same for the one alone. These details are known in the Maliki School. Ibn Sha'ban said that for a man and woman he stands wherever he likes.]

21.2e. The salam

The salam for this prayer is said once quietly both by the imam and those following him.

[In the well-known position. One position has 'quietly" and so one combines and says it quietly. This is for both the Imam and follower. This differs from what is in the *Mudawwana* that the Imam says the salam of the janaza so that the one next to him can hear it. The one

following says the salam so that only he can hear. If the one next to him hears it, there is no harm.]

21.3 Reward for the Prayer and Attendance

There is a great reward to be gained from doing the prayer and for being present at the burial. This reward is equivalent in size to Mount Uhud.

[This is clarified in the words of the Prophet in the *Sahih*, "Whoever follows a janaza of a Muslim in belief and expectation, and remains with it until he prays over it and leaves after it is buried returns with a reward of two qirats. Each qirat is like Uhud. Whoever prays over it and then returns before he is buried he returns with a qirat."]

21.4. The First Three Supplications

21.4a No specific formula

There is no specific formula for the du'a to be made when doing the funeral prayer.

[There is nothing specific because there are various supplications related from the Prophet and the Companions in that. Ibn al-Hajib and others relate the agreement that no specific supplication is recommended. That is followed by the fact that in the *Muwatta'* Malik recommends the supplication of Abu Hurayra which is: "O Allah, he is Your slave and the son of your slave and the son of your woman slave. He used to testify that there is no god but You alone with no partner and that Muhammad is Your slave and Your Messenger and You know him best. O Allah, if he is good, then increase his goodness. If he did evil, overlook his evil actions. O Allah, do not deny us his reward and not tempt us after, him."]

21.4b. All are possible

All the things which have come down are acceptable.

[Any supplication is permissible, so say what you like.]

21.4c. One excellent form

One good thing to say after doing the takbir is: Praise be to Allah who makes dies and brings to life and praise be to Allah who beings the dead to life. To Him belong Greatness, Sovereignty, Power, Exaltedness and He has power over all things. O Allah, bless Muhammad and the family of Muhammad as You blessed and were merciful to and poured goodness on Ibrahim and the family of Ibrahim. In all the worlds, You are Praiseworthy, Glorious.

O Allah, he is your slave and the son of Your slaves. You created him and provided for him. You made him die and You will bring him to life and You know best about his outward and his inward. We have come to You as intercessors on his behalf so please accept our intercession. O Allah, we seek safety for him by Your bond of protection with him. Certainly You keep Your word and promise. O Allah, protect him from the trials of the grave and from the torment of Jahannam. O Allah, forgive him, have mercy on him, pardon him and grant him well-being. Be generous to him when he arrives and open the way wide for him to come in. Wash him with water, snow and ice and cleanse him from his wrong actions as a white garment is cleansed of dirt. Give him a home better than the home he had, a family better than the family he had and a wife better than the wife he had. O Allah, if he was right-acting, increase him in right-actions and if he was wrong-doing, then overlook his wrong actions. O Allah, he has come to You and You are the Best that anyone can come to. He is in need of Your mercy and You have no need to punish him. O Allah, make his speech firm when he is questioned

and do not rest him in his grave beyond what he can bear. Do not deprive us of our reward for doing this on his behalf and do not test us after him.

21.5 The Fourth Prayer

You say this after each takbir and then after the fourth takbir you say, 'O Allah, forgive those who are alive and those who are dead, those present with us and those absent, those who are young and those who are old, those who are male and those who are female. You know everything that we do and where we will end up - and forgive our parents and those who have gone before us with iman and all the muslims both men and women and all the muminun both men and women, the living and the dead. O Allah whoever of us You keep alive, keep him alive in iman and whoever You take back to Yourself take him back as a Muslim. Make us glad when we meet You. Make us pleasing at the time of our death and make death pleasant for us. Make it a source of rest and happiness for us,' After this you say the salam.

21.6 If the Dead Person is a Woman

If the dead person is a woman you say, "O Allah, she is your slave and the daughter of Your slaves.É" and you go on making the object of the du'a feminine rather than masculine. The only difference is that you do not say, "Give her a husband better than her husband. . ." because in the Garden she can be the wife of the man who was her husband in this world and the women of the Garden are attached only to their husbands and have no desire for anyone else. A man may have many wives in the Garden whereas women only have one husband.

[**NOTE:** If you do not know whether the dead person was male or female, you intend the prayer over the one who is present, as when you

do not know whether it is one or several. You say in your supplication, "O Allah! They are your slaves and the sons of your slaves," and use the masculine plural.]

21.7 Praying over Several at Once

There is no harm in having one funeral prayer for several dead people.

[This means it is recommended by a group of scholars as opposed to the one who said that they are not put together and that one prays over every dead person on his own. According to the statement that there are several in the same prayer, in what form are the corpses are laid out: is the best put near the Imam and others towards qibla or are they put in one row with the best of them near the Imam? The first is indicated.]

21.7a. The best arrangement of the bodies

If there are both men and women among the dead, the men are placed next to the imam. If there are only men, the best of them is placed next to the imam. If there are women and children as well, they are placed behind the men in the direction of the qibla.

[What he mentioned of putting women before children is based on the position of Ibn Habib. Its opposite is well-known: it is that free adult men are near the Imam, the best and then next best, and then young free men and then hermaphrodites, then male slaves, then free women, then young girls, then female slaves.]

(Khalil puts male slaves ahead of hermaphrodites)

21.7b. Second arrangement: placing them in a row

There is no harm in a number of bodies being placed in a row in which case the one nearest the imam should be the best of them.

[This is when they are all the same type, like all men, all women, or all children. When there are men, women and children, the men are put in the row in front of the Imam, then children in a row, then women in a row. This is in respect to the corpses. As for the imamate, the one with the most knowledge is put first, then the best, then the oldest. Then he discussed when multiple burial is necessary.]

21.7c. Multiple burial

If a number of people are being buried in one grave the best should be nearest the qibla.

[Based on what is in the four *Sunan* that Abu Dawud, at-Tirmidhi, an-Nasa'i and Ibn Majah that the Prophet said on the day of Uhud, "Dig and make it wide and deep and good, and bury two and three in the same grave. Put the one with the most Qur'an first." At-Tirmidhi said that it is sahih hasan. It is clear from the words of the shaykh that it is absolutely permitted to put them together in one grave in case of necessity or otherwise. That is not the case. If necessity demands it, it is permitted. Otherwise, it is disliked. The permission is based on necessity and that is dislike when it is not necessary when they are buried at the same time. If we want to bury a corpse on top of another after he has been buried, that it is forbidden because the grave holds the dead and he is not disinterred unless there is a necessity in which case it is not forbidden.]

21.8 Making Up A Missed Prayer

21.8a When someone has been buried without the prayer

If someone has been buried without the funeral prayer having been done for him and the grave has already been filled in, then the prayer should be done over his grave.

[According to Ibn al-Qasim. Ashhab says that there is no prayer over him. Al-Qarafi, who is the better, said, "As for what is related that the Prophet prayed on the grave of the poor woman, that was special for her or because he had promised her that he would pray over her."According to the statement that there is a prayer at the grave, it is said that the prayer is said over someone who probably would not have decomposed. It is said that it is not permitted after two months. It is understood by his words that if the grave has not been filled in it, he is brought out and prayed over. Even if it has been filled in and buried, he must be brought out and prayed over as long as it is not feared that he has decomposed.]

21.8b No second prayer

You do not do the funeral prayer a second time if it has already been done once.

[This is disliked, whether the one who wants to pray the second time is the one who prayed the first time or not.]

21.8c. The prayer over most of the body

The funeral prayer is done for a person as long as the majority of the body remains.

[Meaning two-thirds or more because the judgement of the majority is the judgement of the whole. He intends the prayer over all the dead person, what is present of him and what is absent. One does not pray over half of a body according to Ibn al-Qasim. That is the accepted position, even if it is more than a half and less than two-thirds because it

would lead to prayer on the absent. A small absence is overlooked because it is inconsequential.]

21.8d. When only a little of the body is left

There is a difference of opinion about whether you do the funeral prayer for, for example, someone's hand or foot.

[The example is applied to the thing itself. So he mentioned the disagreement about the hand and foot. Malik said that one does not pray over it because its owner may be alive. Ibn Maslama said that one prays over the hand or foot and intends the dead person by it, i.e. when it is probable that its owner is dead.]

[Khalil: It is permissible to visit burial places and there are no limitations upon acts of remembrance.

The place where the dead are buried is legally a kind of habs (non-conveyable land). It cannot be sold or alientated or used for any other purpose, It is censurable to walk on or pass over a grave.

Graves should not be opened as long as there are any bones left. They can be opened in certain cases:

1. where the shrouds were stolen;
2. where the burial was on someone's property without his person and the owner reclaims his property;
3. where articles of value were overlooked at the time of burial.

The dead should not be buried in silks, impure garments, or in green, blue, black or carthamine.

The bier should not be unusually large or silken things put on it. Lights should not follow the convoy. The name of the dead should be announced in a loud voice in the mosque or at its door. Private invitations can be sent. You do not have to stand when a convoy passes.

When a believer dies at sea, he is thrown into the sea after having been shroud when there is no hope of making land before decomposition sets in.

A Muslim may not follow an unbeliever to the grave or help to lower him in.]

CHAPTER 22: ON THE SUPPLICATION DONE FOR A DEAD CHILD, HOW THE FUNERAL PRAYER IS DONE FOR THEM AND HOW THEY ARE WASHED

[This chapter deals with judgements particular to children, meaning a child who has at least cried out. He begins with the supplication which is made for him:]

22.1 THE FIRST THREE PRAYERS

You praise Allah tabaraka wa ta'ala and ask for blessing on His Prophet Muhammad, may Allah bless him and grant him peace, and then you say, "O Allah, he is your slave and the son of Your slaves. You created him and provided for him. You made him die and will bring him to life. Make him a forerunner and a stored-up treasure and a reward for his parents. Make their balances heavy through him and make their reward greater because of him and do not deprive either us or them of their reward through him and do not test either us or them after him. O Allah, give him the company of the right-acting muminun who have gone ahead and place him under the guardianship of Ibrahim. Give him a house better than the one he had and a family better than the one he had. Save him from the trial of the grave and the torment of Jahannam."

[This is said after each takbir except the fourth.]

22.2 The Fourth Intercession

You say this after each takbir and after the fourth you say, "O Allah, forgive our forbears and predecessors and those who have gone before us. O Allah, whoever among us You make live make him live in iman and whoever You take back to Yourself take him back as a muslim. Forgive all the muslims both men and women and all the muminun both men and women, the living and the dead." Then you say the salam.

[Just as the salam for the prayer.]

22.3. Still-borns

22.3a No prayer

You do not do the funeral prayer for a stillborn baby.

[The still-born is the one who does not cry. Nor is he washed, even if he moves, urinates, sneezes or suckles for a little, but not a lot. It is the sign a life. This prohibition is one of dislike. As for the one who cries, he has all the judgements of the living, even if he dies immediately, without dispute.]

[Khalil: it is not buried with perfumes or given a name.]

22.3b. Legal consequences

Such a baby does not inherit and cannot be inherited from. If a baby is prematurely stillborn, it is disliked for its body to be buried inside a house.

[Inheritance is a branch of confirmation of life. So any gifts made to him before his birth are returned. He is not buried in the house because it is feared that if the house is destroyed, the bones will be disinterred.]

[Khalil: if a stillborn child is buried in the house, that does not prevent sale of the house.]

22.4 WHO SHOULD DO THE *GHUSL*

22.4a. Women washing boys

There is no harm in women washing the body of a young boy of six or seven years old,

[They do not wash them when they are old At such an age, it is not obliged for them to cover the private parts because it is permitted for the women to look at the body.]

22.4b. Men do not wash girls

but men do not wash the bodies of young girls. There is a difference of opinion regarding young girls who have not reached an age when they might be desired but the former judgement is the one preferred by us.

[The prohibition against men washing a girl is one of forbidding by agreement if she is one of those who might be desirable, like six or seven. They can wash her if she is still a small baby by agreement, i.e. less than three years. There is some disagreement about those who have not reached the age of desirably, Ashhab permits it by analogy with the women washing a young boy, but Ibn al-Qasim forbids it. It is the position of the *Mudawwana*.The accepted position is that of Ibn al-Qasim because the female is generally desireable.]

CHAPTER 23: ON FASTING

{This also deals with things connected to it like the Tarawih prayer. Linguistically "*siyam*" means to restrain and abandon. Whoever forgoes something is said to be fasting. Allah Almighty says in the story about Maryam, "I have vowed a fast to the All-Merciful," (19:26) meaning a silence, which is withholding from words. In the Shari'a, it is to restrain the appetites of the stomach and genitals from dawn to sunset with an intention before or at dawn except in days of menstruation, lochia and 'ids. Fasting is divided into the obligatory and non-obligatory.]

[Khalil: tobacco is also avoided in the fast.]

23.1 ITS RULING

Fasting the month of Ramadan is obligatory.

[It is obligatory by the Book, the Sunna and consensus. Whoever denies that it is obligatory to fast Ramadan is an unbeliever by agreement. Whoever affirms its obligation and refuses to fast it is a rebel and is compelled to do it.

It is affirmed that the fast of Ramadan begins by one of two things, either by the month of Sha'ban lasting 30 days or by sighting the new moon.]

23.2 BEGINNING THE FAST

23.2a. When the fast begins

You start fasting when the new moon is sighted and you stop fasting when the new moon is sighted, whether this is after thirty or twenty-nine days. If the new moon cannot be seen because of clouds you

count thirty days from the beginning of the preceding month and then begin fasting. The same applies to ending the fast.

[His literal words are whether the sighting is exhaustive, when a group sight it so that impossible to accuse them of lying because their report gives information, or with two witnesses of good character only, with clouds or clear skies, meaning there is no difference between the large and small town. Similar to the two witnesses of good character is one whose report is trusted, even if a slave or a woman, when the place does not pay attention to the business of the new moon in respect of the people of the seer and others. If the place is concerned with the business of the new moon, the seeing of one does not affirm it, even for his family, and even if they believe him, but he must present his business to the ruler. It is not permitted for him to break the fast. If he breaks it, he disbelieves, even if by interpretation because the interpretation is unlikely. The fast is also broken by seeing the moon of Shawwal. If there are clouds, then you count from the beginning of the month of Sha'ban. The basis for this is what is in the two Sahih collections that he said, "Fast when you see it and break the fast when you see it. If it is cloudy, then complete the number."

There are seven preconditions for the fast.]

23.2b. 1. The intention

You should make an intention to fast the whole month at the beginning of the month and it is not necessary to make a new intention every night for the rest of the month.

[He should formulate the intention with his heart the first night of Ramadan after sunset and before dawn or at dawn as an act of nearness to Allah Almighty by performing what is obliged of him during the day of refraining from eating, drinking and intercourse. It is not an obligation to make the intention on the rest of the days. Malik says that the

intention is must be made at night, and that is stated by ash-Shafi'i and Abu Hanifa, because the days of the month are individual acts of worship separate from one another. The invalidation of one does not invalidate another, and they are not impaired by what is contrary to them at night, like eating, drinking and intercourse. So the days become like the five prayers during the day. It is obliged to give day an intention for the fast as it is obligatory to have an intention for every prayer. The evidence of the Maliki School is the words of the Almighty, "So every one of you who is present (at his home) during that month should spend it in fasting.." (2:185) This command is transferred to one fast, which is the fast of the month. The intention is made in the night based on what the authors of the Sunan reported of the words of the Prophet: ""Whoever does not intend the fast before dawn has no fast." Advancing it is overlooked in the fast because of the difficulty. Ibn Naji said, "The literal words of the shaykh is that it is not obliged for someone who breaks the fast, like the menstruating women, to renew the intention. That is the case according to Ashhab and others. There remain the sick person and traveller when they continue to fast. They are obliged to make the intention every night beause it is not oblgiatory for them to continue. When the sick person becomes well and the traveller arrives, the intention for what is remains is enough for them, like the menstruating woman who becomes pure, the child who reaches puberty in the fast, and the kafir who becomes a Muslim during the month.

The other preconditions are:

2. Islam.
3. Sanity.
4. Being free of menstruation and lochia.
5. Refraining from things that break the fast.
6.The ability to fast.
7. Adulthood.]

23.2c. Duration of the fast

You fast until night comes

[Based on the ayat and because the Prophet said in the *Sahih*, "When night advances from there and the day retreats from here and the sun sets, the faster breaks the fast."]

and it is sunna to break the fast as soon as possible

[When you are certain the night has come. There is disagreement about continuing after sunset. Some say that it is unlawful as it is unlawful on the Day of the 'Id. Some say it is permitted and he has the reward of the faster. The fiqh of the question that he he has the reward of the faster is weak. The statement that it is unlawful is more likely unless his intention is that it is obliged for him. Otherwise, it is disliked when it is without necessity.]

23.2d. Delaying suhur

and to delay your suhur. If you are not sure if the time of fajr has come or not you should not eat.

[Sahur means what is eaten and suhur is the act of eating. The amount of the best delay after finishing eating and drinking there remains until Fajr the amount of time it takes to recite 50 ayats. The basis for this is the words of the Prophet, "My community will continue to be all right as long as they hurry to break the fast and delay the sahur." (Ahmad) If he is unsure of the time of Fajr, he should not eat or drink or have intercourse. This can mean prohibition or dislike. The well-known position is that it is a prohibition. If he is unsure about sunset, it is unlawful to eat and otherwise break the fast by agreement.]

23.2e. Not fasting the Day of Doubt

You do not fast the 'day of doubt', fasting on the grounds that it might be part of Ramadan.

[This prohibition is one of dislike according to the probable text of the *Mudawwana*. Ibn 'Abdu's-Salam said, "What is probable is that it is a prohibition based on what at-Tirmidhi related in a hasan sahih hadith: 'Ammar ibn Yasir said, "Whoever fasts the Day of Doubt, has rebelled against Abu'l-Qasim (the Prophet)."

We consider the Day of Doubt which is forbidden to fast to be the day when it was cloudy on the night of the 29th and vision was not established, and so the morning of that night is the Day of Doubt.]

23.2f. Its judgement when it is fasted

If you do this it is not counted even if it turns out to have been Ramadan.

[If you fast the Day of Doubt out of caution and then it is established to be Ramadan, it is not counted because the intention was not firm.]

If you want to fast that day as a voluntary fast, however, you can do so.

[i.e. this is when it is his custom to fast.]

23.2g. When you discover it is Ramadan in the morning

If you get up in the morning and discover, before having eaten or drunk anything, that Ramadan has begun you must fast the rest of the day but you cannot count it as one of the days of your Ramadan and you have to make up a day.

[If this happens, you have to make it up by the lack of the intention. Nevertheless you must avoid food and drink and anything that would invalidate the prayer for the rest of the day. It is also obligatory for him to fast if he has eaten or drunk or the like. He makes it up, but there is no kaffara since he forgot or it was intentional by interpretation. If it is something else, then he must do kaffara.]

23.2h. When someone returns from a journey or stops menstruating

If someone returns from a journey and they are not fasting or if a woman finishes menstruating during the day then in both these cases it is alright for them to eat and drink during the remainder of that day.

[This in the daytime. It is not recommended for them to refrain. It is the same in the case of the child who reaches maturity, the madman who recovers his senses, the sick person who starts out not fasting and then becomes well. It is the same for the one who faints and then regains consciousness, the one compelled by the necessity of hunger or thirst, and the nursing woman whose child dies in the day. It is the same for an unbeliever who becomes Muslim, although it is recommended for him to refrain which is not the case with the others. As for the one who breaks his fast by forgetfulness or on the Day of Doubt or is forced to break it, and their excuse is removed, then it is obligatory for them to refrain. When the one forced breaks his fast after the compulsion is removed, he must make it up with kaffara unless there was a valud interpretation.]

23.3 The Ruling On Breaking A Voluntary Fast

23.3a. Breaking it intentionally

If you are doing a voluntary fast and break your fast intentionally, or if you start off on a journey and break your fast because of it, you must make up that day.

[Without compulsion or excuse, or because you set off on a journey while observing a voluntary fast and then break it because of it: it is obligatory to make it up in both cases. Ibn 'Umar said that there is disagreement about when he breaks it intentionally: is it recommended to fast for the rest of it or is that not recommended as al-Uhjuri said?]

23.3b. Breaking it unintentionally

If in a voluntary fast you break your fast unintentionally you do not have to make up a day but if this happens in the obligatory fast you have to make up a day.

[There is no disagreement that it is not obligatory to make it up if it is unintentional, but there is a disagreement about whether it is recommended and there are two positions. Ibn al-Qasim heard that it is recommended. When the obligatory fast is unintentionally broken, it must be made up. Zarruq said, "The literal meaning of his words is that the obligatory is in Ramadan or elsewhere."]

23.4 Things Which Break Or Do Not Break The Fast

23.4a. Siwak

There is no harm in using a siwak at any time during the day while you are fasting

[This is stated in the Mudawwana. It means it is permissible, as Ibn al-Hajib stated, "The siwak is permitted every day as long as nothing splits off from it. It is disliked to moisten it." Some of them said that it is permitted after midday for the one who does not have a legal requirement. As for a legal requirement like wudu', the prayer, recitation and dhikr, it is recommended. That is correct as the hadith shows in the words of the Prophet, "If it were not that it would be hard on my

communtiy, I would comamnd them to use the siwak for every prayer." So this includes the person who is fasting.

When he says, "during the day while you are fasting" that alludes to the words of ash-Shafi'i and Ahmad ibn Hanbal that it is preferred before midday and disliked after it based on what is in the *Sahih* where the Prophet said, 'The odour of the the mouth of the faster is sweeter with Allah than the scent of musk." That is because of Allah's pleasure with him and His praise for the faster.]

23.4b. Blood-letting

and blood-letting is not disliked except if doing it will cause over-exhaustion.

[i.e. illness. In the dictionary, it means to expose oneself to death.Therefore cupping is only disliked when illness is feared because he is unsure about health and its absence. If he knows it is safe, there is no dislike.]

23.4c. Vomiting

If you vomit involuntarily while fasting in Ramadan you do not have to make up a day

[If it is in Ramadan or another day, there is no obligation or recommendation to make it up, whether it is for a reason or simply on account oif fullness, and whether the food has been altered or not. This is when he knows that none of it went back to his stomach after reaching his mouth. If he knows that some of it went back after it reached his mouth, then he must make it up when it is unintentional. Otherwise he owes kaffara. He must also make it up if he is unsure about that. Undigested food is like vomit. It is what emerges from the mouth of the intestines when they are full. As for phelgm which reaches the end of the

tongue and he swallows it deliberately, there is no making up. It is the same with spit which he collects in his month and then swallows. He does not have to make anything up.]

23.4d. Swallowing vomit

but if you make yourself vomit you have to make up a day.

[There are two statements about whether this is obligatory or recommended. Ibn al-Hajib says that the first is well-known, and it is preferred. Ibn al-Jallab preferred the second. The literal words of the Shaykh is that there is no kaffara for the one who makes himself vomit in Ramadan. There is some disagreement in the question about whether or not there is kaffara. 'Abdu'l-Malik said that he makes it up and does kaffara. Ibn al-Majishun says that the one who makes himself vomit intentionally without illness must make it up and do kaffara. Abu'l-Faraj says that if Malik had been asked about the like of it, he would have obliged kaffara. It is related from Ibn al-Qasim that he just makes it up.

Know that breaking the fast in Ramadan is obligatory in certain cases and permitted in some. The first category is when a woman menstruates during the day: she must break the fast for the rest of the days.]

23.5 Pregnant and Nursing Women

23.5a. Pregnant women

If a pregnant woman is afraid on account of the child in her womb she should break the fast. She does not have to feed anyone in expiation. It has also been said that she should feed people.

[If she fears for her child or herself or that she will become ill, she breaks the fast and that is obligatory. According to the well-known position, she does not feed people, but simply makes it up. It is said that

she should feed as related by Ibn Wahb. What is understood from his words is that it is when she does not fear, she does not break it even if the fast exhausts her. That is not the case. If the fast exhausts her, she can choose to break it. What is derived from what Ibn 'Arafa says is that the pregnant woman, nursing woman and sick person can break the fast when fasting if it is difficult for them, even if they do not fear illness or its increase. The healthy person cannot break the fast when it is difficult. There are two statements about whether he breaks the fast out of fear of illness. Part of the second, which is that illness permits it in some cases, is when he fears increased or continuing illness. If he fears death or great harm, then he must break it. In the fear which permits breaking the fast, the person relies on the the doctor's statement, or his own personal experience, or the experience of someone with a constitution like him. Travel has its preconditions which will be discussed.]

23.5b. Nursing women

Similarly, if a nursing mother fears for her child and cannot find a wetnurse, or if the child will not accept to be fed by anyone else, she can break the fast but she must feed people in expiation.

[This is permission if she fears for her child or herself on account of fasting. In such a case she must feed people. It is also said that it is an obligation to break the fast and feed people.]

23.6. The Old

If an old man cannot fast, it is recommended for him to feed people.

[If he is unable to fast at any time, he is permitted to break the fast by the words of Allah, "No self is charged beyond what it can bear,"(2:233) and "He has not placed any constraint on you in the deen." (22:78) The literal text of the *Mudawwana* is contrary to what he mentioned of the recommendation to feed. He says that there is no fidya. However, the

Mudawwana relates that he is not obliged to feed and so that is not contrary to the recommendation.]

23.7. FEEDING PEOPLE (FIDYA)

23.7a. Its amount

Feeding people in this context consists of giving away one mudd for each day which has to be made up.

[Feeding is done by the pregnant woman fearful for what is in her womb, the nursing mother who fear for her child, and the very old man who cannot fast is a mudd, by the Prophet's mudd.]

23.7b. Its ruling

Someone who fails to make up missed days before the following Ramadan should also feed a poor person for each day they still owe.

[The ruling varies because the feeding done by an old person, as was said, is recommended. The feeding of a nursing woman is obligatory. The literal sense of his words is that making up Ramadan is at leisure, and it is what is indicated by the hadith of 'A'isha in the *Muwatta*'. She said, "I used to have to make up days from Ramadan and not be able to fast them until Sha'ban came because I was busy with the Messenger of Allah." So it is evident that it it permissible to delay it until Sha'ban, even if what was delayed becomes immediately obligatory. That shows that the obligation is wide. Malik said that it should be immediate, but that is weak. According to the first statement, he is considered to be lax in Sha'ban when he is healthy and at home, and so they must feed. When he owes 15 days, then residence and health are considered at the last half of Ramadan and feeding is obligatory if he is sound and resident. If he is ill in it or on a journey, there is no feeding. According to the second, laxity is considered in Shawwal according to what he owes of fasting

based on analogy with what we said about Sha'ban. If Ramadan is 30 and he fasts a month to make it up and it is 29, then he completes the 30. It is permitted to make it up at any time in which it is permitted to fast voluntarily. It is not made up in days when it is forbidden to fast.]

23.8 CHILDREN

Children are not obliged to fast until such time as a boy has his first wet dream or a girl her first menstrual period because it is when children reach physical maturity that all the physical acts of worship become obligatory for them. Allah ta'ala says, "When your children reach physical maturity they should seek permission (to enter)." (24:59)

[One of the preconditions for the fast is being an adult. It is neither obligatory nor recommended for children to fast. Maturity is by ejaculation or age which is 18 in the well-known position. This is different from the prayer. It is recommended to command them to do it. Maturity is what brings the person from childhood to manhood and sense. All acts - prayer, fasting, hajj and raiding - are obligatory for them, as well as actions of the heart, like the obligation of intentions which are obligatory because the intention is one of the actions of the heart, and creeds like the belief that Allah is One, for example. Evidence that obligations become incumbent children when they reach maturity is in the words of Allah Almighty. Asking permission is obliged then and is connected to maturity.]

23.9 DEFILEMENTS

If someone who has not done ghusl wakes up after fajr in a state of janaba or if the period of a woman who has been menstruating

finishes before fajr and she does not do ghusl till after fajr, then fasting that day is valid in both these cases.

[This is either from intercourse or an intentional or unintentional wet-dream in an obligatory or voluntary fast, or a woman has her period stop and sees that she is pure before fajr. If they do not have a ghusl until after dawn, even if they are able to do, their fast is still allowed and they owe nothing. The validity of the fast of the person in janaba is that it is confirmed that the Prophet was in janaba at fajr in Ramadan and he had a ghusl and fasted. As for the validity of the menstruating woman whom becomes pure before fajr in Ramadan, it is agreed that that is when she is pure before fajr with the amount in which she could wash. According to the well-known position that also applies to the amount of time in which it is not possible to wash. If she becomes pure after fajr, her fast is not valid.]

23.10 On Feast Days

23.10a. Not allowed on the 'id

Fasting is not permitted on the day of 'Id al-Fitr or the day of the 'Id al-Adha nor should anyone fast the two days after the 'Id al-Adha unless he is doing Hajj Tamatt'a and does not have an animal to sacrifice.

[As it is not permitted, it is not valid since it is forbidden by the Prophet to fast them.]

23.10b. The fourth day

There should be no voluntary fasting on the fourth day either but if someone has vowed to fast or has previously broken off a consecutive fast, they should fast that day.

[The fourth day after the Day of Sacrifice is not made a voluntary fast. It is fasted by someone who has fasted Shawwal and Dhu'l-Qa'da for kaffara for a dhihar divorce or murder and then becomes ill and regains his health in the fourth night. He can fast it.]

23.11 MAKING UP THE FAST

23.11a. Breaking the fast out of forgetfulness

If you break the fast in Ramadan out of forgetfulness you only have to make up that day.

[You are obliged to continue to fast and to abstain through the rest of day of Ramadan. You are obliged to continue to fast when you break it by forgetfulness in an obligatory fast other than Ramadan. There is no making up in the well-known position. One should be careful about forgetting. When you break it intentionally you owe kaffara as well as making up. That is why he says "only" since he has he owes no kaffara because which differs from Ibn al-Majishun and Ahmad who say that there is kaffara if he breaks it through intercourse based on the hadith of the bedouin who came to the Prophet beating his chest and pulling his hair, saying, "I am destroyed! I am destroyed!" The Prophet asked him, "What is the reason for this?" He replied, "I had intercourse with my wife in Ramadan" He commanded him to do kaffara. The reply to that by the Maliki masters is that the circumstances of striking himself and pulling his hair indicate that the intercourse was intentional.]

23.11b. Breaking the fast because of illness

The same applies if you are forced to break the fast due to illness.

[When the fast is too difficult with it, or when he fears that the illness will continue longer, or increase, or healing will be delayed, he only has to make it up without kaffara. If it is an illness in which it is not difficult

to fast or in which increased illness or delay of health is not feared, and he breaks his fast, then he must make it up and do kaffara.]

23.12. A TRAVELLER

23.12a. Length of journey

If you are on a journey for which you can shorten the prayer you are permitted to break the fast even if there is no particular need to do so, making up any days missed later, but according to us it is better to fast.

[If you go on a journey at the time of the intention such that you will reach a limit where shortening the prayers begins before dawn. So the distance is four or more mail stages of a return journey, and it should not be a journey involving disobedience of Allah. You are permitted to break it, eat, drink and have intercourse. This is even if the journey is not necessary. There is no disagreement that he must make up the fast by the words of the Almighty, "the prescribed number should be made up from days later," (2:184) The Malikis prefer that the one one who is strong enough should fast because the Almighty says, "It is better for you if you fast."]

23.12b A journey of less than the minimum

If anyone travels less than four mail stages (48 miles) and breaks the fast thinking it is permissable to do so, they do not have to do kaffara although they must make up the day. [Anyone who breaks the fast through an interpretation does not have to do kaffara.]

[Because he followed an interpretation. He is only obliged to make it up without dispute. The literal words about the one who uses interpretation not owing kaffara are unrestricted, but there is a well-known disagreement. The interpretation must be a likely one. There is no

kaffara because he is excused by relying on a strong reason. If the interpretation is unlikely, which is when its reason is not strong, then there is kaffara. One of the cases in which is the reason is strong is the case we mentioned about the old man, and the one who breaks the fast out of forgetfulness and then breaks it intentionally that it is permitted: he owes no kaffara. There is also the case of the person in janaba or menstruating before dawn who only had a ghusl for that after fajr and thought that the fast for that day was not obliged and deliberately did not fast: he has no kaffara. There is the case of someone who who has suhur at fajr and thinks that the fast for that day is not binding and so he breaks it after that intentionally: he owes no kaffara. There is the one who arrives after a journey at night in Ramadan and thinks that he does not have to fast the morning of that day and that one of the preconditions of the obligation of the fast is that he come from the journey before sunset. and so he breaks it deliberately: he owes no kaffara.

Unlikely cases are those in which the cause is weak. If he sees the moon of Ramadan and his testimony is not accepted and he thinks that the fast is not binding for him and so he breaks it - he owes kaffara. Part of it is the person who normally has a fever every three days and so when the day he comes he breaks the fast and then the fever comes to him on that day. He is obliged to do kaffara, and even more so if it does not come. One is the woman who normally menstruates on a particular day and so she does not fast that day and then she menstruates later in the day. One of them is the one slanders a person in Ramadan and thinks that that invalidates his fast because he ate the eat of his the flesh of his brother and so he breaks it intentionally. He must do kaffara, and make it up.]

23.13 Kaffara

23.13a. Who owes kaffara

Kaffara only applies to people who break the fast deliberately either by eating, drinking, or sexual intercourse.

[If he resolves to eat and drink or have intercourse, but does not do it, he owes nothing, either making it up or kaffara. It is same for someone who resolves to break wudu' by breaking wind, for instance, and does not do it- he does not have to do wudu'.

In the case of intercourse, one distinguishes the deliberate from the forgetful and the ignorant, i.e. the one who was ignorant of the prohibition and the one who did not rely on anythng, like someone who is a new Muslim who believes that fasting does not forbid intercourse, for instance, and so does it -he owes no kaffara.]

23.13b. Making up the day

The actual day when the kaffara was incurred must also be made up on top of the kaffara itself.

[Making it up is obliged as well as the kaffara.]

23.13c. What kaffara consists of:

[The kaffara on account of eating, drinking, or intercourse deliberately in Ramadan by abuse or unlikely interpretation is one of three things from which one can choose.]

23.13d. 1. Feeding sixty people
The kaffara for breaking the fast consists of feeding sixty poor people with one mudd for each person using the mudd of the Prophet, may Allah bless him and grant him peace. This is the preferred way of doing kaffara according to us.

[It is taken from the normal food of the one who expiates or from the dominant food of the people: there is disagreement on that. Al-Lakhmi said: "That proceeds according to the disagreement about kaffara," i.e. the kaffara of the oath, and the zakat al-fitr. The preferred position is that

it is the food of the people of the land. It is understood from in his words about 'sixty', as in the *Mudawwana*, that it is not satisfied by giving 30 poor people two mudds each. If he gives to less than sixty, he takes back from each of them what is more than a mudd if it is in his possession and completes the sixty. If that has been consumed, he cannot take it back because he is the one who gave them power over that. What is meant by the poor person here is not what is meant by it in zakat, i.e. the one who does not have anything. What is meant is the one in need of it and the poor person who does not have food for that year. There disagreement about which of the three types is best. The well-known position is that it is feeding and that is what is stated here. It is preferred by some of the people of Malik because it has more benefit.]

23.13e. 2. Freeing a slave

However, it is also possible to carry out kaffara by freeing a slave

[The second is freeing a slave. It is a precondition that it be a believer free of defects - like blind, dumb, or mad.]

23.13f. 3. Fasting two months
or fasting for two consecutive months.

[The third is to fast for two consecutive months. Kaffara is counted by the days.]

23.13g. Eating while making up

Someone who breaks the fast deliberately while making up a day of Ramadan does not have to do kaffara.

[This is because kaffara is one of the special things of Ramadan, and there is no disagreement in what we mentioned according to Ibn Naji. The disagreement is whether one or two days are made up. It is preferable that he makes it two, as ibn 'Arafa said.

NOTE: Making up Ramadan is valid on separate or consecutive days, but doing it consecutively is better.]

23.14 UNCONSCIOUSNESS

23.14a. When someone regains consciousness after fajr

If someone becomes unconscious during the night and recovers consciousness after fajr he should make up a day.

[Ibn Habib said he is not commanded to refrain from eating for the rest of the day. Loss of consciousness is the removal of sense by an illness which afflicts him, as stated in *at-Tahqiq*. That which he relied on is the commentator of Khalil. The relied-on position is that if he is unconscious for all or most of the day, he must make it up, whether he is sound at the beginning of it or not. If he is unconscious for less than half of it, and is sound in the beginning of it, it is allowed. Otherwise it is not. We said 'sound at the beginning,' meaning conscious at the time of the intention, even if it he was unconscious before it and recovers before fajr for the amount of time in which he could do it, even he did not, according to the relied on position. This is when he made the intention in the night before it so that it is included in the intention for the month. Otherwise it is not, because there must be an intention since it is not valid without the intention. The one intoxicated by something lawful is like the unconscious person in the details mentioned, but the one who becomes intoxicated by something unlawful at night and remains drunk must make it up. If a sleeper makes the intention at the beginning of the month and then sleeps for the entire mouth, his fast is valid and he is free of responsibility.]

23.14b. Prayers which must be made up

He only has to make up a missed prayer if he comes to during the time it is due.

[If he fainted at night and wakes up after dawn. This was covered in the Chapter of Prayer. He repeats it here to point out that the fast is different from the prayer. The menstruating woman makes up the fast but no the prayer because of the difficulty of repeating it.]

23.15 Other Prohibitions in the Fast

23.15a. Guarding the tongue and limbs

When you are fasting you should guard your tongue and limbs

[That is recommended, and some say it is obligatory, and there is no contradiction between the two positions. The one who says it is obligatory applies to to refraining from the forbidden, and the one who recommends it applies it to refraining from what is not forbidden, like excessive permissive speech.

He mentions the limbs which are seven: hearing, sight, tongue, hands, feet, belly and genitals. The tongue is mentioned specifically because it results in the greatest calamities. It is said that there is not a morning but the limbs complain to the tongue, "We ask you by Allah, go straight and we will be straight. If you are crooked, we will be crooked. 'Umar visited Abu Bakr and found him pulling his tongue. He said, ' What, Abu Bakr!" He said, "Leave me. It has brought about things." People should curtail what they say in Ramadan.]

23.15b. Honouring the month of Ramadan

and honour the month of Ramadan as Allah has honoured it.

[Allah says "the month of Ramadan in which the Qur'an was revealed." (2:185) It is honoured by the recitation of Qur'an, dhikr, fasting, praying, sadaqa, and other acts of worship. It is disliked to esteem it by decorations and delegations and the like.]

23.15c. Avoidance of sexual pleasure in the day

A fasting man may not have sexual intercourse during the daytime in Ramadan nor may he touch a woman or kiss her to gain pleasure.

[Intercourse is forbidden by agreement. Other things are said to be haram or disliked. It is possible to say that there is no contradiction, and it is possible that the illicitness is applied when he does not know that there is security and dislike when he knows it. In short, it is disliked for the old and young, male or female, to kiss his spouse or slavegirl while he is fasting, or to touch or dally. It is the same for looking or remembering when he knows that he is safe from sperm and prostatic fluid. If he knows that he is not safe or is unsure about it, it is unlawful. It is not unlawful for him in the night unless he is doing i'tikaf or fasting for the kaffara of a dhihar-divorce. In such a case the day and night are the same. If he does any of that while fasting and is safe, he owes nothing. If he ejaculates, he must make it up and do kaffara.]

23.15d. Sexual pleasure allowed at night

None of these things, however, is haram for him during the night.

[This is because the Almighty says: "Lawful to you on the night of the fast is going to your wives..." (2:187) Night and day are the same for the one doing i'tikaf and fasting the kaffara for dhihar.]

23.15e. Waking up in janaba

It does not matter if you wake up in the morning in a state of janaba because of having had sexual intercourse.

[Here he repeats this point to clarify that the fast is valid if you are in janaba.]

23.15f. Emission of madhy in Ramadan

If you do get sexual pleasure during the daytime by touching or kissing and this results in the emission of madhy (prostatic fluid) you must make up that day.

[Or through looking or thinking, then he must make up the day for the emission of madhy, whether it lasts or not. For the emission of madhy for any reason, there is only making up, which is obligatory. If there is no madhy, there is no making up, even if there is an erection. It is what Ibn Wahb, and Ashhab related from Malik in *al-Mudawwana*. It is the preferred position.]

23.15g. Emission of sperm in Ramadan

If you do it deliberately and the result is the ejaculation of many (semen) you have to do the kaffara.

[According to the well-known position. He is silent about looking and remembering. Al-Fakhani say that if he continues to look until he ejaculates, then he must make it up and do kaffara. If he does not continue to do it, then he must only make it up according to the well-known position Al-Qabisi says that if he looks once deliberately, he must make it up and do kaffara. Al-Baji said that it is sound and gave remembering the same judgement as the glance. If he continues to remember until he ejaculates, then he must make up and do kaffara. If he does not continue to do it, then he makes it up without kaffara.]

23.15h. The reward for fasting

Anyone who fasts Ramadan with belief and with awareness of the reward for doing it is forgiven all his previous wrong actions.

[He believes in the reward if he fasts with the awareness that its reward has been stored up for him by Allah in the Next World and he does not fast in order to show off or for reputation. The wrong actions forbidden are the minor ones between him and his Lord. Major wrong actions are only expiated by repentance or Allah's forgiveness.]

23.16. THE TARAWIH PRAYER

23.16a. The reward for praying at night

If you stand up in prayer during the night, to the extent that you able to do so, you can expect great good from it and pardon for your wrong actions.

[The reward for standing in prayer is not limited to all the night, but is obtained by anyone who stands for part of it according to his state without limit.]

23.16b. Tarawih are performed with an Imam in a group

These night prayers are done with an imam in mosques where the prayer is normally done in jama'a.

[It is permitted to do these prayers in the mosque in groups with an Imam. This is an exception from the dislike of praying the nafila in group which is indicated by the words of Shaykh Khalil, added to the dislike of gathering for nafila or in a known place since the action to gather for them continued from the time of 'Umar ibn al-Khattab. Part of his sunan is to do this and the time they are done is after 'Isha']

23.16c. They can be done at home

If you want to you can do these night prayers at home. Indeed this is considered better if your intention is strong enough for you to do them by yourself.

[It is considered better to do them at home on you own if you are not too lazy.]

23.16d. How the Salaf first did them

The righteous people of the first community used to do these prayers in the mosque. They did twenty rak'as followed by three rak'as - two for shaf'i and one for witr with a salam in between.

[These are the Companions, peace be upon all of them. They did them in the time of 'Umar ibn al-Khattab in the mosque with 20 rak'ats. That is preferred by a group, including, Abu Hanifa, ash-Shafi'i and Ahmad, and the action now does that followed by the shaf'i and witr. Abu Hanifa says that there is no salam between the two, and ash-Shafi'i says that there is a choice.]

23.16e. The later practice of the Salaf

Later they began praying thirty-six rak'as not including the shaf'i and witr. Both of these are acceptable.

[Then the Salaf other than the first Salaf, namely the Tabi'un, increased it. 'Umar ibn 'Abdu'l-'Aziz commanded that to do that since it contained benefit because they were making the recitation long which caused boredom and weariness, and so he commanded them to shorten the recitaiton and increase the rak'ats. That which 'Umar ibn 'Abdu'l-'Aziz did was preferred by Malik in the *Mudawwana*.]

23.16f. Done in groups of two rak'ats

You say the salam after each two rak'as. 'A'isha, may Allah be pleased with her, said that the Messenger of Allah, may Allah bless him and grant him peace, never did more than twelve rak'as followed by a single rak'a of witr, either in Ramadan or out of it.

[Then he explains how the Messenger of Allah did them according to 'A'isha which differs from what is in the *Muwatta'* where she says that he did not exceed twelve at any time, Ramadan or not. It also differs from what is related from her that he prayed 15 and 17. Other things are related from his wives and they can be combined if the Prophet first prayed two to greet the msoque and then stood to do tahajjud with two quick ra'kats to start. When he left for the Subh prayer he prayed the two rak'ats of Fajr. So they can be added together.]

1. Suhur is the meal eaten before fajr prior to a day's fasting.

2. Thirtieth of Sha'ban if the new moon has not been seen the previous night.

CHAPTER 24: ON I'TIKAF

[This comes after fasting because it is prescribed as a result of fasting. He begins with its ruling:]

21.1 ITS RULING

I'tikaf is a meritorious voluntary act. It derives from a word meaning 'to stay in one place'.

[It is best done in the last ten days of Ramadan since the Prophet did that. Linguistically it means means devotion to a thing and sticking to it. In the Shari'a, it means that the Muslim clings to the mosque for dhikr, the prayer, recitation of the Qur'an while fasting and refraining from intercourse and things which lead to it for a day or more with an intention. This definition includes its pillars which are: Islam, discrimination and being in a mosque, and what was mentioned of dhikr, prayer, etc, and refraining from intercourse and things leading up to it. Its pillars designate that on which the reality of the thing is based. It is an act of devotion with those qualifications.]

24.2 PRECONDITIONS

24.2a. Fasting

You can only do i'tikaf if you are fasting

[In the well-known position. It is not valid for someone who is not fasting, even on account of a valid excuse, as opposed to the one who says that the i'tikaf of the old man who cannot fast is valid and the physically weak and that fasting is not a precondition of i'tkaf in the school. Another precondition is:]

24.2b. Consecutive

and if it is consecutive and

[As long as he has not vowed it separately. If he does vow that, then consecutiveness is not obliged.]

24.2c. In a mosque

in a mosque, as in the words of Allah ta'ala, 'While you are doing i'tikaf in mosques.'

[It is not valid in houses, shops and other such places. I'tikaf is valid in any mosque, even if there are only three mosques in a town.]

24.3. Concerning the Mosque

If the town is one where there is a Jumu'a, then i'tikaf must be done in the jama'a mosque, unless you are fulfilling a vow to do a certain number of days in i'tikaf and these do not include the day of Jumu'a.

[If there is a Jumu'a and he is someone who is obliged to go to Jumu'a and vows some days of which Jumu'a is one. So it must be in the Jama'a mosque in which Jumu'a is sound. It is not valid on the roof of the mosque nor in an adjoining house or washing place, nor in a storehouse since they enclose him and so resemble shops.]

24.4. Its Length

24.4a The best length

According to us it best to do at least ten days.

[In the Maliki school at least ten are recommended. Its most complete form is a month and it is disliked to do more. There is an opinion that its minimum is a day and a night and most complete is ten days and more than that is disliked, or different to what is best.]

24.4b. Other lengths

However, if someone makes a vow to do i'tikaf for one day or more, they must fulfil their vow. If the vow was just for one night, they must do i'tikaf for a day and a night.

[The literal meaning would be that if he vowed a day, the night is not necessary. That is not the case. The school of the *Mudawwana* is different. If he vows a day, a day and a night is obliged. If you said this is unclear since how can he be obliged with what is disliked because the *Mudawwana* makes it clear that it is disliked for less than ten days according to the position that the minimum of what is recommended is ten days, the answer is that he is speaking about what he vows. It is obliged it even if it is disliked. Al-Uhjuri mentioned it. The well-known position is that he must do a day and a night if he vows a night. Sahnun says it is invalid because if someone vows i'tikaf in the night without the precondition, it is not valid.]

24.5 Breaking The Fast While In *I'tikaf*

24.5a. Deliberately

If someone in i'tikaf deliberately breaks their fast, they have to begin their i'tikaf all over again

[This is by eating or drinking. There is a difference between what is deliberate or forgetful as stated in the *Mudawwana*. Illness and menstruation are in the same category as forgetfulness. So when he eats out of forgetfulness or becomes ill or a woman menstruates, they do not

have to begin again since it is not invalidated and he makes it up after the excuse which broke the retreat no longer exists.]

24.5b. Intercourse in i'tikaf

and the same applies to someone who has sexual intercourse while in i'tikaf whether during the day or the night and whether it is through forgetfulness or deliberate.

[He adds in the *Mudawwana* "or kisses, has contact or touches." Ibn Naji says, "even if there is no pleasure." Abu'l-Hasan qualifies it by experiencing or intending pleasure even if he does not feel it.]

24.5c. Falling ill while in i'tikaf

If you fall ill in i'tikaf you can return home but you should complete your i'tikaf when you are well again.

[If the illness prevents the person from remaining in the mosque or fasting rather than remaining in the mosque, he must return home with the illness which prevents remaining in the mosque, and is permitted to do so there is an impediment to fasting only. According to ar-Rajraji he is obliged to remain in the mosque. When he is healthy, he returns to the mosque and resumes the i'tikaf, rather than making up.]

24.5d. Menstruating in i'tikaf

The same applies to a woman who starts to menstruate in i'tikaf.

[Or has bleeding from childbirth. She leaves and resumes it later.]

24.5e. Restrictions which continue to apply

The restrictions of i'tikaf continue to apply to both sick people and women who are menstruating during the time they are away from

the mosque. When the woman regains her purity she should return immediately to the mosque whether this happens by night or by day.

[So they are not permitted to do outside the mosque what is incompatible with i'tikaf except not fasting. When the menstruating woman becomes pure and has a ghusl, or the sick person recovers, whether it be night or day, they return to the mosque immediately. If they do not return at that time, they restart according to the well-known position. If they return, that day is not counted because of the impossibility of fasting it.]

24.6. NOT LEAVING THE MOSQUE

24.6a. Only to go to the lavatory

People doing i'tikaf should not leave the mosque except for normal needs.

[It is all that compels him to leave: urine, faeces, the ghusl for Jumu'a, the 'id, wudu', ghusl for janaba, eating and drinking provided that he does not go beyond the near place to the further place. Otherwise, his i'tikaf is invalidated. Another precondition that he does not engage in conversation with anyone. Otherwise his i'tikaf is invalidated. Then he clarifies the time in which i'tikaf begins :]

24.6b. When you enter the mosque

You should enter the mosque where you are intending to do your i'tikaf before sunset on the night you intend to start.

[This is recommended. Compare it with what is in the two Sahih collections of the hadith of 'A'isha. She said, "When the Messenger of Allah wanted to do i'tikaf, he prayed Fajr and then entered into his i'tikaf." The answer is that he entered at the beginning of the time. He

isolated himself in the place in which he intended to do i'tikaf after Subh. What what meant by his place of i'tikaf is the tent 'A'isha had set up for him, and he prayed Subh and then entered it.]

24.7. WHAT TO AVOID IN *I'TIKAF*

While in i'tikaf you should not visit the sick, follow funeral processions or go out to transact any business.

24.7a. Visiting the sick

[While somone is in i'tikaf, he is forbidden to visit the sick, as long as it is not one of his parents or both of them. In such a case, he is obliged to go out to show filial devotion since it is an obligation in the Shari'a and his i'tikaf is invalidated.]

24.7b. Funerals

[He is not permitted to come out for the funeral prayer of both his parents. If he goes out, his i'tikaf is invalidated. He must go out to the funeral prayer for one of them since not going out is disobeying the living. That is not the case when they are both dead. His i'tikaf is invalidated. This applies to his parents, even if they are unbelievers. He does not join the funeral prayer, even if it is placed adjacent to him, and if it is the funeral or a neighbour or righteous person.But if he does visit a sick person in the mosque or prays in a funeral prayer in it, his i'tikaf is not invalidated.]

24.7c. Business

[As for business, Ibn 'Umar asked, "Do his words, "does not go out to transact business" mean the usual going out because business takes in the markets and so it is prohibited to trade in the mosque or outside it, or do we say that he does not go out in the usual way and so it is permitted

to trade inside the mosque? What is preferred is the first probablity which coincides with what al-Aqfahasi said: "If he makes a contract on a sale inside the mosque, his i'tikaf is not invalidated." That is the case if the transaction is put in front of him. If he exceeds that, then his i'tikaf is invalidated unless it is through a broker and so it is prohibited without dispute. If it is without a broker and it is something slight, it is permitted without dislike. If it is a lot, it is disliked, but it does not invalidate the i'tikaf in two aspects, i.e. whether by a broker or not, as the sale is not invalid without disagreement i.e. whether it is forbidden or disliked. That is not imagined in the form of permission. He is permitted to go out for other than trade for what he cannot dispense with, even if he goes far outside, as long as he does not pass a closer place where he can buy, but with the precondition that he does not find anyone to sell to him.]

24.7d. No preconditions

You cannot make your i'tikaf conditional in any way.

[It is not permitted to stupulate a condition in it. Its literal meaning it is forbidden, as "I will do i'tikaf for ten days. If I think I should leave, then I will leave," or he says, "I will do i'tikaf for the days rather than the nights," or the reverse. It is like that if he makes a precondition that if something occurs to him which obliges him to make it up, he will have to make it up. There is no difference in that between making a precondition before beginning it or afterwards. If any of that occurs, the precondition is invalid and the i'tikaf is valid.]

24.8. Lack of Impediments

24.8a. The Imam can do it

There is no harm in the imam of a mosque doing i'tikaf.

[But it is better if he leaves it, meaning it is disliked for the Imam of the mosque. Or he indicates someone who says that the Imam of the mosque cannot do it. Ibn Waddah related from Sahnun that he did not permit the person in i'tikaf to act as Imam of the obligatory or nafila prayers. It is permitted that he be the Imam of the mosque with an equal balance on each side according to what Ibn Naji says, or it is recommended that he be the regular Imam. It is relied upon. He reported the permission without his aim being refutation. Abu 'Imran reported that it is permitted. There is a text in the *Mukhtasar* that he is disliked it for the regular Imam. You that it is confirmed that the Prophet did i'tikaf while he was the Imam. It is not concealed from you that it weakens what is in the *Mukhtasar* and what is relied on is the recommendation which is in agreement with the hadith.]

24.8b. Marriage

It is permissible for someone in i'tikaf to get married and for him to officiate at someone else's marriage.

[It is qualified in the *Mudawwana* that he does it while he is in place. If it is elsewhere, it is disliked if it is in the mosque and forbidden if it is outside of the mosque and then his i'tikaf is invalidated. It is also qualified by it not taking up a lot of his time. Otherwise it is disliked, whether he is the husband or the guardian. If it is said that the one in ihram is forbidden to contract a marriage, so what is the difference between him and the one in i'tikaf since they are both involved in a form of worship in which intercourse is forbidden, there are various answers, one of which is that the basic position is the permissibility of marriage for everyone. The person in ihram is removed from this by the statement of the Messenger of Allah that the person in ihram does not marry or give in marriage. The rest remands on its original basis which is permissibility.]

24.9 Leaving i'tikaf

24.9a When he leaves outside of Ramadan

If you go into i'tikaf at the beginning of the month or in the middle of the month, when you leave from your i'tikaf you should do so after the Maghrib of its last day.

[This is any month outside of Ramadan. He is permitted to leave his i'tikaf after Maghrib without dispute in the school. This is outside of Ramadan.]

24.9b. When he leaves in Ramadan

However, if the period of your i'tikaf continues until the day of the 'Id al-Fitr then you should spend the night before the 'Id in the mosque and leave from it in the morning to go to the place where the 'id prayer is going to be held.

[If his i'tikaf is in Ramadan, then the end is sunset on the day of the 'Id al-Fitr and so he is recommended to spend that night in the mosque until morning and go to the place of prayer since that is what the Prophet did, i.e. he connects one act of worship to another.]

CHAPTER TWENTY-FIVE: ON THE ZAKAT OF MONEY, CROPS, LIVESTOCK AND WHAT COMES OUT OF MINES; JIZYA AND WHAT SHOULD BE TAKEN FROM DHIMMI MERCHANTS AND MERCHANTS WHO COME FROM THE DAR AL-HARB

[In this chapter he also mentions mines and the zakat on merchandise. Linguistically zakat means growth and increase and it is used for the increase in crops and property. In the Shari'a it is a term used to designate the amount of money or goods taken from specific property when it reaches a specific amount at a specific time which must be spent in specific categories with specific ways. It is called zakat because the one who gives it grows by doing it with Allah Almighty, i.e. his rank with Him is raised by that. It is attested to by the words of the Almighty, "Take sadaqa from their wealth to purify and cleanse them" (9:103)]

25.1 ITS RULING

It is obligatory to pay zakat on money, crops and livestock.

[Money consists gold and silver and is mentioned in respect to the tradition. What is mentioned of gold and silver is called "specie" ('*ayn*) by its honour. Crops consists of food groups used for life in general. Livestock refers to camels, cattle, and sheep and goats.

Zakat became an obligation in the second year of Hijra. The evidence for its obligatory nature is the Book, Sunna and consensus. Whoever disputes its obligatory nature is an unbeliever. If someone affirms that it is obligatory but refuses to pay it, he is beaten and it is taken from him

by force and that is enough: he is not an unbeliever. Ibn Habib says he is an unbeliever, but this is unlikely.

There are preconditions for the obligation and preconditions for the validity. As for the first, they are seven in general because Islam is one of the preconditions of the obligation since the unbelievers are not responsible for the rulings of the Shari'a. The soundest position is that they are addressed to them, and so Islam is a precondition for its validity.]

25.2. Its Preconditions

[The preconditions of the obligation are:

1. Islam,
2. Freedom,
3. The nisab,
4. Ownership,
5. A year for other than treasure-trove and tenths,
6. Lack of debt in money,
7. The coming of the collector to the herds if there are collectors and they can reach them.

The preconditions for its validity are four:

1. Intention,
2. Its distribution in the place of its obligation,
3. Paying it after it is becomes obligatory,
4. Paying it to a just Imam to take it and spend it if he exists or to its people, who are the eight classes indicated by the words which are indicated by the words of the Almighty: "Sadaqa are for the poor and the needy" (9:60)]

25.3. THE TIME OF THE OBLIGATION

25.3a. On crops

Zakat on crops must be paid on the day they are harvested.

[There are two statements about grains and three about fruits. The first is by Malik who says that when the palms are appraised, the grapes are good, the olives are black or near to it, the crop was begun to ripen and does not need water, then zakat is due on it . Ibn 'Abd's-Salam said that it is the well-known position. The second is by Ibn Maslama is that it is only obliged on crops when they are harvested and only obliged on dates when they are cut. His evidence is the words of the Almighty, "Render the dues that are proper on the day that the harvest is gathered." (6:141)This is the meaning "harvest and cutting". The third is particular to dates which is that they are only obliged by estimation, which is made by al-Mughira. There is an order to these things: first soundness, then estimation and then cutting; and ripening is first and then harvest.]

25.3b. On money and livestock

Zakat on money and livestock is paid once a year.

[Money is other than mines and treasure-trove. Zakat is obliged on money and livestock once a year, after the end of a full year. Zarruq said, "The precondition of livestock after a year is that the collector comes in the well-known position if he exists and arrives. Otherwise it is obliged after the year by agreement. According to the well-known position, if it is paid before he comes, then it does not satisfy the requirement.]

25.4 On Farm Produce

25.4a. The minimum amount

No zakat is due on any amount of dates or grain less than five wasqs.

[Since it is sound that the Prophet said, "No zakat is due on grain or fruit until it reaches five wasqs." (Muslim) Ibn 'Umar said, "See whether legumes are included with grain, raisins and olives with fruits or not. Some commentaries include it in grain and make grain include other things than fruits. There are 19 types: wheat, barley, sult-barley, rice, millet, sorghum, and Arabian wheat, and seven legumes: lentils, beans, broad beans, chick-peas, lupines, peas, grass peas, and oil seeds, which are the seeds of red radishes, sesame designated as sesame and cartham (safflower), and olives and raisins. So there are twenty types of fruits. No zakat is obliged on others like cotton seeds or rape and the like.

They mentioned two rules for the five wasqs: one is by measure and the other by weight.]

25.4b. What the measure of the wasq is

Five wasqs is the same as six and a fourth qafizes. (609.84 kg.) One wasq is sixty sa'as measuring by the sa'a of the Prophet, may Allah bless him and grant him peace. One sa'a is four mudds.

[Wasq linguistically is joining one thing to another. The Almighty says, "and the night and all it shrouds (*wasaqa*)," (84:17) i.e. joins and gathers the darkness and the stars. It is 60 sa's by the sa' of the Prophet. So he states that the nisab in the year is 747 mudds with the mudd of the Prophet. Then he goes on to explain the categories which are joined together and when they form the nisab, there is zakat due, and the types which are not joined since not all of the categories are combined to reach the nisab.]

25.4c. The case of certain grains

Wheat, barley and sult barley are considered as one category for zakat purposes

[Wheat, barley and sult barley are combined as a single category of grain as is stated in the School. They are also a single category in sales according to the well-known position and so disparity in selling one for the other is forbidden. They are combined when they are cultivated and harvested in the same year. When they are cultivated in two or more years, it is said that one considers what is grown at the same time and they are added to each another, and what is grown at one time is not added to what is grown at another time. It is said that what is considered is the crop. If he plants the second before harvesting the first, it is added to it. Otherwise it is not. The first is from Malik in the book of Ibn Sahnun and the second by Ibn Maslama.]

25.4d. When zakat is due on them

so that if together they add up to five wasqs you have to pay zakat on them.

[Ibn 'Umar said that he pays from each grain what is representative of it and so he pays the highest from the highest, the lowest from the lowest, and the middle from the middle. If he chooses to pay the highest grain for the lowest, that is allowed. If he pays the lowest for the highest, that is not allowed. So there is agreement regrding grains that he pays from every type what is representative of it. There is agreement regarding animals that he pays the middle. There is disagreement about dates: it is said that they are like livestock, and it is said like grains.]

25.4e. Pulses are combined

In the same way different kinds of pulses are added together

The Maliki School considers that pulses are considered as a single category for zakat, but not for selling. Pulses includes various types: peas, chickpeas, lentils, grass peas, broad beans, lupins, beans and sesame seeds. The commentator on the Muwatta' said that radish seeds are included with them.]

25.4f. Dates and raisins

and this also applies to different varieties of dates and raisins.

[The same is for dates and raisins when they reach five wasqs.]

25.4g. Rice, sorghum and millet are different categories

However rice, sorghum and millet are each considered to be in a different category and are not added together when calculating zakat.

[Each of these are a separate category and according to the School they are not added together because they are clearly separate and their form differs. He says this is in reference to zakat to indicate the the person who says that they are all one category in usury, i.e. disparity is not allowed between them. That is the position of Ibn Wahb. The well-known position differs from that.]

25.4h. What is done with the various types of dates

If there are various types of dates in a date-garden you use the middle quality when paying zakat.

[So they are good, middle and poor. In the well-known position, the middle variety are used. If there is one type, it is taken from it, be it is good or poor. He does not have to bring the middle or the best of it. If there is both excellent and poor, he takes each from its share, even if the poor is few, because the basis is that zakat is taken from its source by the words of the Prophet: "The zakat of every property is from it." The sunna is makes certain requirements in livestock. So the sunna is that it is paid from the generality of livestock because it is taken from the middle and the rest remains on its root.]

25.4i. Olives

You pay zakat on olives when the amount of them reaches five wasqs, paying the zakat in oil.

[i.e. measured in dry ones. Ibn Wahb says that there is no zakat on them nor in anything which has oil. The sound position in the basis of the School, i.e. sound and current according to the rule of the School is that that which is not a foodstuff has no zakat paid on it. We read in *at-Tahqiq*, "Even it is not a comestible, it is included in it if it is sound for food." According to the statement that there is zakat, its zakat is given from its oil, not from its grain in the well-known position. There is no precondition that oil reach the nisab in weight. The precondition is the grain reaching the nisab, as was clearly stated by the Shaykh. Ibn al-Hajib reported the agreement on that. If it is paid from its grain, that is not allowed.]

25.4j. Zakatable seeds

You also pay zakat on sesame seeds and radish seed in oil for them. If you sell this produce, it is possible to pay the zakat owed using the money you have received, if Allah wills.

[And other things which are pressed for oil when that reaches the nisab. if the olives are sold, then it is paid from the price whether the price reaches the nisab or not. The nisab of the grain itself is only considered, not the price. One of them said that he said, "If Allah wills" because of the weakness of this position, and some say that it is because of the strength of the disagreement regarding it. That which is in the *Mukhtasar* and its commentary is that if olives and their like have oil, it is paid from their oil. If they have no oil, like olives of Egypt, it is paid from their price. It is like that with what is it not dried, like the fresh dates and grapes of Egypt and green broad beans. Zakat is paid from their price, even if they are sold for a lot less than that on which zakat is obliged if it is estimated to be five wasqs. If it is less than that, nothing is obliged on it, even if he sells it for many times more than what would incur zakat.]

25.5.k. Fruit and vegetables

You do not pay zakat on fruit and vegetables.

[Like apples and apricots, nor vegetables based on what is reported by Mu'adh ibn Jabal: the Messenger of Allah said, ""There is a tenth ('ushr) on land watered by the sky or springs or running springs.There is half an 'ushr (5%) on land which is irrigated," i.e. that which is transported from a river or well to water crops by some device. That is about dates, wheat and grains. As for cucumbers and watermelons, they are exempt as the Messenger of Allah exempted them.]

25.6. ON MONEY

25.6a. The nisab on gold

There is no zakat on gold if you have less than twenty dinars. If the amount reaches twenty dinars you pay one half of a dinar, in other words, one-fortieth of the total amount. Any more than that is

calculated on the same basis, however small the additional amount is.

25.6b. The nisab on silver

There is no zakat on silver if you have less than two hundred dirhams, which is five uqiyyas - one uqiyya being forty dirhams. This is based on seven dinars being of the same weight as ten dirhams. If you have two hundred such dirhams you pay one-fortieth, that is five dirhams. Anything more than that is calculated on the same basis.

[By the legal dirham, which is the Makkan dirham. Its weight is 555 grains of middle barley corns. Each dinar weighs 72 grains. It is said that it is the dirham of measure because by the legal measures.]

25.6c. Gold and silver are a single category

Gold and silver and considered as one category for the purposes of zakat. So if, for example, someone has one hundred dirhams and ten dinars they should pay one-fortieth of each.

[Since that is what the Prophet did in that. It is clarified in *at-Tahqiq*: "It is related that Bukayr ibn 'Abdullah ibn al-Ashajj said, 'The sunna is that the Prophet joined gold to silver and silver to gold and took zakat from them."

He goes into a subcategory of that. The joining is by parts and not by value. The opposite would be to make each dinar equal to ten dirhams, even if its value is many times over, as when he has 100 dirhams and ten dinars, or 150 and 5 dinars. If he has 180 dirhams and 1 dinar equal to 20 dirhams, he does not pay anything. It is permitted to pay one of the two types for the other according to the well-known position.]

25.7. On Merchandise

25.7a. Only on trading merchandise

There is no zakat on goods unless they are for trading purposes.

[Goods comprises slaves, real estate, land, clothes, wheat, and all grains, fruits and animals when they are less than the nisab. As for private property, there is no zakat on it by agreement. As for merchandise, there is zakat on it by agreement. As for hoarding which is what is kept from the markets for a large profit, zakat is obliged on it.]

25.7b. Preconditions

[There are preconditions for the obligation of zakat on it.

1. One of them is the intention, which is indicated by "unless they are for trading purposes." This means he only intends them for commerce, or commerce as well as private ownership, or revenue. He is careful about the lack of intention so when there is an exchange of goods which is not intended for commerce, as when it is simply for ownership or just for revenue or both, then there is no zakat.

2. The second precondition is that he keeps thegoods from the markets until a time when there is a good profit.]

25.7c. Sale income

If you sell goods after one year or more from the day you bought them or paid zakat on their price,

[3. The third precondition is that he owns them by paying for them. This precludes goods possessed through inheritance, gifts or the like. There is

no zakat on them except after a year from the day their price is received, even if he delays receiving it to avoid zakat.

4. The fourth is that he sells them for money, not that he sells them at all or sells them for other than money, unless selling them not for money is out of the intention to evade zakat. There is no difference in selling between it being real or metaphorical in that a person consumes the item and the merchant takes his price. What is sold must reach the nisab because stored goods are not evaluated as opposed to the situation where there is a constant turnover. So simple selling in respect of it is enough for the existence of zakat, even if the price of what he sells is less than the nisab because he must value the rest of his goods. This precondition is taken from his words:]

25.7c. Length of time

then you only have to pay one year's zakat on the proceeds of the goods whether these goods were in your possession for one year or more than one year before you sold them.

[To exclude the one who sells it for goods. He does not pay zakat.

5. The fifth precondition is that a year passes from the day the zakat was paid on the capital or he acquires it. He is silent about the precondition, which is that the basis of those goods be money by which he bought them. If it is less than the nisab or was by barter, even private property which he then he sells and uses to buy those goods for the sake of trade. If he sells them before the end of the year, there is no zakat on them until the year has passed.

Then he moves to speaking about the merchandise which has a constant turnover, which are goods which he buys for trade and sells without waiting not wait for a favourable market or a slack market like all

owners of shops with a constant turnover. This is an exception to the previous statement.]

25.7d. The case of constant turnover

However, if you are a merchant with a constant turnover so that you never keep money or goods in your possession for any length of time then you should assess your goods every year and pay zakat on them and on whatever cash you have in hand at that time.

[He sells for current price and replaces it and does not wait for a good market to sell or a slack market to buy. Then you assess your goods of every category for what they are normally sold at that time time for a price equivalent to the common sale rather than the forced sale because the forced sale is at a great reduction. Brocade and similar cloth, like fine cotton garments, delicate cloth, and real estate, are assessed in gold, and coarse garments and daily wear are assessed in silver. He begins the assessment, i.e. the tax year, according to Ashhab from the day he begins to trade. Al-Baji said that it is from the day the zakat of the price is taken or from the day he has profit. After assessment, zakat is paid on the merchandise provided some have been sold, even a dirham. There is no difference between selling something at the beginning or the end of the year. When he does not sell anything or has a sale a month after the year, for instance, he assesses it at that point, and transfers his year to that month and voids the extra over the year. It is like that the one who deals in money if it is with him. It is like that with the zakat of his debt when it is immediately taken.]

25.7e. Zakat on investments

Zakat is due on invested wealth when that wealth has been in your possession for one year.

[It would literally mean whether there was a nisab or not. That is the case in the well-known position. For example, he has a dinar which remains with him for 11 months. Then he buys goods with it which he sells after a month for 20. He pays zakat now, when he sells them after a month, relative ot the fact that it was with him for 11 months, and it becomes the second year when it is completed.]

[If he enters the zakatable level in the year, he pays for the entire year.]

25.7f. Zakat on the offspring of livestock

Similarly zakat is due on the offspring of livestock if the mother animals have been in your possession for a year.

[The basis for that is the statement of 'Umar for them to count the lambs with their mothers but not to take them. The profit is like the lambs, and lambs include the male and female young sheep and young goats at the moment which they are born.]

25.8. DEBTS

25.8a. Debts cancel out wealth

If you have wealth on which zakat is due but you also have a debt of the same amount or one which will reduce your wealth to less than the amount on which zakat is due then you do not have to pay zakat.

[So i f you have 20 dirhams and owe a debt in goods, for instance, or food, livestock or something else, immediate or deferred, equal to the

amount or one which will reduce it below the minimum on which zakat is due (as when he has 20 dirhams and owes half a dinar) there is no zakat in both cases. The apparent meaning of the words of the Shaykh is that the debt cancels zakat, even if it is the mahr of this wife who is in his care, and even more so if she is divorced and he owes her the mahr. It is the preferred from the two well-known positions. In the other well-known position, it is not cancelled.

Acording to the well-known position, the debt cancels zakat, even the debt of the zakat, as opposed to the debts of vows and expiations which do not cancel zakat. The difference is that the debt of zakat is sought by the just Imam, and zakat is taken, even by force, which is not the case with vows and expiations. Then there is an exception from that generality.]

25.8b. If you have other assets

If, however, you have other assets on which zakat is not due such as personal effects or slaves or domestic animals or private property which could be used to pay off your debt, then you do pay zakat on your wealth.

[This is when someone has wealth on which zakat is due and has a debt equal to it; or one which reduces the zakatable property. If he has goods like slaves, real estate, residences, garments, grains, dates and animals less than the nisab, or even if he has grains, dates or animals on which there is zakat, he puts that against the debt he owes and pays zakat. Real estate means that which has no lintels, like open land, houses is property with a lintel like houses. If the wealth on which zakat is not obliged of his personal goods is enough to discharge the debt, it is put opposite the debt he owes with the precondition that he has had it for a year. The year of everything is according to it. This applies to things that can be sold to settle the debt.]

25.8c. The difference

If your assets are not sufficient to pay your debt, then you calculate the difference between the debt and your assets and subtract the difference from the wealth on which zakat is due. If there is still enough left for zakat to be due you must pay the zakat.

[It is assessed according to what is left. So if he has 30 dinars and owes 20 and has goods which could be sold for ten to settle the debt and has had them for a year, ten are be taken from the 30 and and put opposite the debt. What is meant is not acutal taking and giving since it is permitted to delay the term of the debt. So 20 remain free of the debt and zakat is paid on them.

Then he clarifies zakat which is not cancelled by debt.]

25.8d. Debt does not affect zakat in kind

Debt does not, however, affect the obligation to pay zakat on grain, dates or livestock.

[Nor does it affect the zakat of mines or treasure. For instance, he may have some of these things and owe a debt which would absorb all he has. He still must pay zakat on it and the debt does not cancel what is due on it. The difference between that and money is that the sunna has come that the debt affects money. As for livestock and fruits, the Messenger of Allah and the khalifs after him sent assesors and agents and they estimated for the people and took the zakat of their livestock from them and did not ask whether they had a debt or not.

Similarly the debt does not cancel Zakat al-Fitr according to Ashhab, and it is the preferred position. According to 'Abdu'l-Wahhab it cancels it.]

25.9 IF ONE HAS CLAIM TO A DEBT

25.9a No zakat on money owed until it is received

You do not have to pay zakat on money which is owed to you until after you have received it and if the debt has been outstanding for a number of years you only pay one year's zakat on it after it is repaid.

[Whether it is money or goods, until he receives it, meaning the loan and unpaid sales when it is hoarded. An example of that is when he has some money and lends it to a man or buys goods with it and then sells it with a debt. It does not matter how many years pass: the zakat of its owner is due one year after it it received if it is the minimum or is added to money he has and it reaches the minimum. It is evident he pays for just one year, even if he delays it to evade zakat. Ibn al-Qasim said that if he leaves it to evade zakat, then he pays for the past years.]

25.9b. The case of goods sold

This is the same as when you own goods. You only pay zakat on them after you have sold them.

[These are goods stored up for trade. They are the same as the debt since their source is money. He pays zakat for one year even if they remain for many years.]

25.9b. Claims which are inherited

If the debt owing to you on the goods has been inherited by you, you wait for one year after receiving payment before paying the zakat due.

[If there is an inheritance which he does not receive for some years, or the goods which he sells are from inheritance, i.e. he inherited goods and sells them but does not receive that price for some years, or the debt is from a gift or sadaqa in the possession of the giver or a brideprice in the hand of the husband or khul' which he pays, or the fine of a tort in the hand of the perpetuator or his guardian, there is no zakat on it except after a year from when he takes it, even if he delays it out of avoidance. If the gift remains in the possession of its giver before giving and taking for two years, there is no zakat on it for previous years from either the giver or receiver according to Sahnun because the ownership is clear when the recepient takes it on the day of the sadaqa and that is why he had its proceeds from the day it is given.]

25.10 Minors and Slaves

25.10a. Minors

Zakat must be paid on wealth belonging to minors whether it is in the form of money, crops or livestock.

[Based on what is in the *Muwatta'* from 'Abdu'r-Rahman ibn al-Qasim from his father. He said, "'A'isha used to look after me and one of my brothers in her house. We were orphans. She used to pay the zakat from our property." (17.6.13) In it 'Umar said, "Trade with the property of orphans and then it will not be eaten away by zakat." (17.6.12) The like of this is not stated out of opinion. The guardian of orphans does not pay zakat for them until the matter has been presented to the Imam or Qadi. The gist of the fiqh of the question is that what is considered is the school of the trustee because disposal depends on him and not on the school of the father of the children since he is dead and the property has moved on from him, nor the school of the child because he is not responsible for it. So the trustee does not pay its zakat if his school is that it is cancelled for the child. Zakat is also paid on the property of the insane.]

25.10b. Zakat al-Fitr of Minors

Zakat al-fitr must also be paid on their behalf.

25.10c. Slaves

Slaves, including those who are partially but not completely freed, do not have to pay zakat on any of these categories.

[Slaves of any category do not pat zakat. That applies to all the categories and to zakat al-Fitr.]

25.10d. After slaves are free

If they have been completely freed they do not pay zakat on any wealth in their possession until a whole year has passed from the day when they were freed.

[It is a precondition that they own it for a year: cash or livestock.]

25.11 PROPERTY FOR PERSONAL USE

25.11a. No zakat on personal property

No zakat is payable on slaves, servants, horses, your house nor on any private property or goods which are for your own personal use nor on jewellery which in regular use.

[There is no zakat on such property as indicated by the hadith in the two *Sahih* collections where the Prophet said, "There is no zakat owed by the Muslim on his slaves or horses." It is not due on jewellery which is worn by women even if it belongs to a man. From this it might be assumed that jewellery which is rented must have zakat paid on it. The evident text of the *Mudawwana* is that there is no zakat, and that is the accepted

position. As for jewellery for the purpose of trade, there is zakat on it by consensus whether it belongs to a man or a woman, and its zakat is a year from the time when it is intended to trade in it. It is weighed every year and if it reaches the minimum, or he has gold and silver which will complete the nisab.]

25.11b. Inheriting that on which zakat has been paid

If you inherit or are given any goods or take any produce, on which zakat has already been paid, from your land and then sell any of these things, no zakat is due on the proceeds until a year has elapsed.

[The literal meaning of 'selling' is whether it is sold for money or on credit, and its literal meaning is also whether or not he leaves it to avoid zakat. 'Produce' is what is normally produced since its judgement is the same when it comes from land which is not his, as when he rents land and grows crops in it. So he pays zakat on it when the crop is produced, and it is like that if he did not pay zakat on it on.]

25.12 MINES

25.12a. The zakat on mines

Zakat is due on gold or silver extracted from mines as soon as the weight of gold amounts to twenty dinars or the weight of silver to five uqiyyas. One-fortieth must be paid on the day it is extracted.

[By his literal words, this would apply to nuggets found without mining or with little work. The famous well-known is that there is a fifth on mines and that fifth is paid to the Imam if he is just. Otherwise it is distributed to the poor Muslims. There is no zakat on mined things other than gold and silver - like lead, copper, iron, and arsenic. This zakat is due when it reaches the minimum weight. One-fortieth is due on that,

not a fifth by the generality of the statement of the Prophet, "And there is no zakat on what is less than 5 awqiyyas." This implies that when there is five awqiyyas, there is zakat on it, and that includes ore. It is due the day it is extracted and the year is not a precondition for it. al-Aqfahasi said that the Shaykh means the year is not a precondition and he means after it is extracted because the obligation is only connected to it after it is extracted. It is one of two statements. The famous one is how al-Aqfashasi applied the Risala as meaning after extraction. So the obligation is connected to its mining and not its extraction.]

25.12b. Further payment of zakat

After this zakat is due on all gold and silver continuously extracted from the same deposit, however small the amount until such time as that deposit has been worked dry. If work is begun on another deposit, no zakat is due until the amount extracted reaches the amount on which zakat is due.

[This continuity is probably in obtaining and or work or in both together, and so there are three possiblities, and he prefers the first. When he begins a new work, then there is no zakat until the nisab is reached as was the first case.]

25.13 JIZYA

25.13a. Who pays jizya

Jizya is taken from the men of the people of dhimma status provided that they are both free and adult. It is not taken from their women, their children, or their slaves.

[Ibn Rushd defines it thus: what is taken from the people of disbelief in repayment for their security and sparing their lives while they remain unbelievers. It is derived from *jaza'* (repayment) which is exchange,

because they receive security in exchange for the money they pay. We offer them security and they offer money. It is not taken from three categories: women, children and slaves because Allah Almighty has obliged it on those who can fight, and generally that is men rather than women and children.]

25.13b. Its Preconditions

[The author implies that there are four preconditions for paying jizya: male, adulthood, freedom and disbelief. There is also a precondition that he mix socially with the people of his deen. Jizya is not taken from someone alone in a monastery or hermitage. It is a precondition that the unbeliever remain an unbeliever. It is not taken from the apostate because he is not confirmed in his disbelief. Sanity and the ability to pay it are two preconditions. It is not taken from the madman nor from the pauper who has nothing.]

25.13c. Magians and Christian Arabs

It is taken from Magians and from Christian Arabs.

['Abdu'l-Wahhab said it applies to both Arabs and non-Arabs. He means universality by that to refute the one who opposes that.]

25.13d. Its Amount

For people who use gold the jizya is four dinars and for people who use silver it is forty dirhams.

[This applies to people conquered by force who are people of the unbelievers whose lands have taken by force. It is like that for the people of truce who are unbelievers who protected their land by making peace in exchange for something which they paid of their property. If

something particular is determined from them, it is taken, be it little or a lot.]

25.13e. Its Reduction

It can be made less for people who are poor.

[It can be lessened for the poor according to what the Imam relates. If someone does not have the ability to pay something, it is cancelled for him. Ibn Habib said that it is not taken from the poor and al-Lakhmi recommended that.]

25.13f. Impost on trading goods

Those among them who are engaged in long-distance trading should pay one tenth of what they receive when they sell their goods even if they come and go several times in on year.

[Meaning the people of dhimma, men or women, free or slaves, or children. It is from a place where jizya is not paid to one where jizya is paid. Ibn al-Qasim said it is a tenth of the sale price. Ibn Habib said it is a tenth of what they bring, like the harbis. According to the position of Ibn al-Qasim, if they want to return before they buy or sell, it is not due from them. It is the evident meaning of the words here. According to the position of Ibn Habib, it is obliged on them. The source of the dispute is whether what is taken from them is connected to benefit or to arrival in the region. It is understood from the words that the tenth is not taken from them when they trade in their land, and that is the case. Then he continues about a tenth of the price which is taken even if they come and go several times in the year. Abu Hanifa and ash-Shafi'i say that it is only taken from them once a year. We have what 'Umar did. The use and judgement are repeated when the cause is repeated.]

25.13g. Food for Makka or Madina

If they are carrying food destined specifically for Makka or Madina only one-twentieth of what they sell it for should be taken.

[If the people of the dhimma carry food, meaning wheat and oil, or it is said that it means all food products. As for things other than food, like goods, the full tenth is taken from their price.]

25.13h. Harbi traders paying a tenth

A tenth is also levied from traders who come from Dar al-Harb (the land of war - beyond the frontiers of Islam)

[This is on what they bring whether they sell or not, and whether they sell in one land or all of the lands of Islam. It is the position of Ibn al-Qasim. His position was given about the people of dhimma that it is not taken from them until there is a sale. There is a difference between them is that the people of harb obtain security while they are in the land of Islam, and all lands of Islam are like one land. As for the people of dhimma, it is taken from them by their benefit and they are not forbidden our lands. So when their benefit is repeated, taking from them is repeated. The apparent meaning of the words of the shaykh is that the tenth is not decreased, even if the Imam thinks that should be done. That is that position of Malik and Ashhab. In short, if it before alighting, an agreement can be made with them for more than a tenth. If it is after they camp, only a tenth is taken from them. Ibn al-Qasim said, "It is taken from them according to the opinion of the ruler." There may be stipulation for more than that when a safe conduct has been previously agreed.]

25.13g. When other terms have been agreed

unless they have agreed to terms demanding more than that.

[It is permitted to take the greater amount which is stipulated. Ibn Naji said: they cannot sell wine to a Muslim by agreement. The well-known postion is that they are able to sell it to others. There is the text of the words of Ibn 'Umar, "When they bring wine and pigs and there are people of dhimma who buy that from them,they are left, and the tenth is taken from them after selling. If there is no one there to buy that from them, they return with it and are not allowed to to import it.]

25.14 TREASURE-TROVE

25.14a. What treasure-trove is

If someone comes upon treasure (*rikaz*) that was buried in the time of the Jahiliyya (before Islam)

[Ibn Habib added in *al-Wadiha* that it is (rikaz) in particular. Kanz is applied to what was buried in the Jahiliyya and buried in Islam. There is disagreement about whether it is particular to gold and silver or general, including other things like pearls, copper and lead. There are two positions reported by Malik. The author of the Mukhtasar confines himself to the second, and says that it is applied to treasure-trove. If he doubts whether it is jahili or not, then the signs are studied. If there are none, that was mostly done by them. Al-Fakhani said it is known to be part of the school which Malik preferred it. Ibn al-Qasim reported that it is particular to gold and silver and its judgment is obliged on it.]

25.14b. What is paid on it

he must pay the fifth.

[The apparent meaning would be even if it is less than the minimum, and this is the case in the well-known position because the Prophet said, "There is a fifth on treasure" and that is general to a lot and a little. It is also clear that Islam and freedom are not preconditions. It also appears that there is a fifth in it, even if it is found by a lot of expense or work in extracting it. There is zakat on it according to what is in the *Mudawwana* and *Muwatta*'.

It also appears that it is absolutely belongs to the one who finds it. Ibn 'Umar affirmed that, but that is not always the case. If it is found in the wilds of the land of Islam, it belongs to its finder. If he finds in it in someone's property, then it is his by agreement. This is the judgement of treasure.

As for what the sea throws up to the shore, like amber, pearls and other jewellry which he finds, they belong to the one who finds them and there is no fifth. Al-Fakhani said unless prior protected ownership is proven by a Muslim or dhimmi. There are two statements: Ibn al-Qasim heard that someone who discards his goods out of fear of drowning takes them from the one who appropriated them. It is like that what he leaves due to constriction and is unable to take. There are two positions.]

Chapter 26: On the Zakat of Livestock

26.1. Its Judgement

Zakat on camels, cows, sheep and goats is obligatory.

[Zakat is obliged on what was mentioned. That is stated by Malikis since the Prophet said, "There is no zakat owed by a Muslim on his horses or slaves." The apparent words of the author is that zakat is obliged on livestock absolutely, foddered or work animals. It is the School. According to Abu Hanifa and ash-ShafiÔi, there is no zakat on work animals since he said, "There is zakat on grazing sheep." He begins with the obligation of zakat on camels to follow the hadith since the Prophet did that in the letter on zakat written for ÔAmr ibn Hazm. There are 11 obligations in its zakat, four of which are taken from a different species, sheep, and seven which are taken from camels.]

26.2. On Camels

26.2a. Five to nine camels

There is no zakat on less than five camels but on five to nine camels you must give either a sheep or a goat which is in its second year depending on which of the two animals is most commonly kept by the people of the area.

[When it reaches this number, one owes a sheep which has been alive for one year and begun the next. There is no difference between the male and female sheep or goat. The judgement is based on what is common. If it is sheep, it is taken from sheep. If it is goats, it is taken from them. If the owner of the property gives a camel instead of the obliged sheep, it is permissible because it is of the same type of property and is worth more

than is what is obliged of him. The limit for a single sheep is nine. So the shortfall (*waqs*) is four, which is the smallest waqs.]

26.2b. Ten to twenty-five

You must give two sheep or goats for ten to fourteen camels and three sheep or goats for fifteen to nineteen camels. For twenty to twenty-five camels you must give four sheep or goats.

[The shortfall in each of these categories are four.]

26.2c. Twenty-five to thirty-five

For twenty-five to thirty-five camels you must give a female camel in its second year (bint makhad) or if there is not one available a male camel in its third year (ibn labun).

[It appears that it has completed two years, and elsewhere it states that it has begun the second year. It is called bint makhad because its mother has given birth because the camel is pregnant for a year and cares for the young for a year. If there are none available or it is damaged, then it is necessary to take a male which has completed the second year and begun the third. If there is neither, the collector charges him for a bint makhad, whether he likes it or not, and then makes the judgement of the absence of both of them like that of their existence. Then he comes with a ibn labun at that point, it is up to the collector to do what he thinks best. If he thinks it right, he takes it. Otherwise he obliges him the bint makhad.]

26.2d. Thirty-six to forty-five

For thirty-six to forty-five camels you must give a female camel aged between two and five years (bint labun).

[The shortfall in this is ten. What is meant is not having lived three full years, but what has two full years and begun the third. The shortfall at the end is 9.]

26.2e. Forty-six to sixty

For forty-six to sixty camels you must give a female camel in its fourth year capable of carrying loads and bearing children (hiqqa).

[If he pays it with two bint labuns, that does not satisfy it, even if they are equal in their value to its value as opposed to the view ash-Shafi'i. What is meant is what has completed its third year and begun its fourth. The shortfall in this obligation is 14.]

26.2f. Sixty-one to seventy-five

For sixty-one to seventy-five camels you must give a female camel in its fifth year (jadh'a).

[Then after this the obligation changes. What is meant is one which has completed its fourth year and begun the fifth. It is the last of the categories taken for paying the zakat of camels. The shortfall is 14.]

26.2g Seventy-six to ninety

For seventy-six to ninety camels you must give two female camels in their third year (bint labun).

[The shortfall is 14.]

26.2h. Ninety-one to 120

For ninety-one to one hundred and twenty camels you must give two hiqqas.

[The shortfall is 29.]

26.2i More than 120

For any more than this you give one hiqqa for every fifty camels and one bint labun for every forty.

[For more than 120, the obligation is this.]

26.3. Zakat On Cattle

26.3a. The nisab

There is no zakat on less than thirty cattle.

[Its nisab is 30. Forty and more are su bject.]

26.3b. Thirty to forty

If there are thirty you must give one in its third year (tabi').

[30 to 40 have a calf in its third year, which is called that because it follows its mother. It is would appear from the words that it is a precondition that it be male, but that is not the case. The well-known position is that it is not a precondition. It must have completed two years.]

26.3c. Forty

This applies up to forty. If there are forty you must give a cow in its fourth year (musinna or thaniyya) - only females are acceptable.

[When the number reaches forty, the obligation changes. One owes a cow in the fourth year, and it is only taken in females. If there is no four

year old cow, its owner is compelled to bring it unless he gives better than it, which is a five year cow. The musinna has full four years according to Ibn Habib and 'Abdu'l-Wahhab.]

26.3d. Third nisab: More than forty

If there are more than that you must give a musinna for every forty and a tabi' for every thirty.

[If there are five more than forty, there is nothing on it. If it reaches 50, there is nothing on the ten in our view. When it reaches 60, there are two tabi' on them. If it reaches 70,there is a tabi' and a musinna. If it reaches 80, there are two musinna. What is more goes according to its rule.]

26.4. Zakat on Sheep and Goats

26.4a. Nisab and up to 120

There is no zakat on sheep and goats until their number reaches forty. If you passes forty you must give one in its fifth year (jadh'a) or one in its fourth year (thaniyya). This applies up to one hundred and twenty animals.

[Neither male or female is specified. Ibn 'Umar said that it was clarified in the nisab of camels.]

26.4b. Second nisab: 120 to 200

If you have between one hundred and twenty and two hundred sheep and/or goats you must give two.

[So the shortfall is 80. Then he indicates the second obligation and its shortfall here is 79.]

26.4c. Third nisab: 200 to 300

For two hundred and one to three hundred you must give three and for every additional hundred you give one animal.

[He said in al-Jallab, in what is more than 300, there is a sheep for every 100. For 399 there are three sheep and for 400 there are four sheep and for 500 there are five sheep and so forth.]

26.5. Computation of Zakat on Animals

26.5a. No zakat on shortfalls

Zakat is not required on any number of animals between the figures mentioned and this ruling applies to all the types of animals mentioned above.

[Then he explains the judgement of the shortfall between the obligations, saying that there is no zakat on the shortfalls. The shortfall is what falls short of the nisab. It is a technical term for all the types of livestock.]

26.5b. Sheep and goats are one category

Sheep and goats are considered as one category for zakat purposes

[This is by consensus. That is what he said in at-Tahqiq because the name of the species includes both of them in the words of the Prophet. So there is a sheep for every forty goats.]

26.5c. Cattle and buffaloes are one category

as are cattle and buffaloes

[This is by agreement because the generic name includes them all, as the Prophet said, "There is a tabi' in every 30.]

26.5d. Bactrian and dromedary camels are one category

and also Bactrian and dromedary camels.

[These are the camels of the people of Khorasan since camel is used for both of them in the words of the Prophet.]

26.6. THE ZAKAT OF JOINT OWNERS

26.6a. How it is paid

The owners of herds which are mixed together pay zakat jointly and settle between themselves the share each must pay.

[This is according to the number of animals. That partnership on which it is obliged has the following preconditions: it is taken from the two owners as it is taken from one owner in amount, age, and category as was mentioned. If each of three has forty sheep, then one sheep is obliged, each owing a third. The example of the second is that when each has 36 camels and then a jadh'a is obliged and each owes a half. The third is that one has 80 sheep and the other 40 goats, and one sheep is obliged, two thirds from one and one-third from the other.

The benefit of partnership can be lightening as when each has forty sheep. On their own, they would each owe one sheep, and together they owe only one sheep. It could make it heavier as when each has 120 sheep and each of them would only owe one sheep, but they owe three

sheep when they are together. Or it may have no benefit, as when each has 100 sheep and each alone would owe one, and it is the same together. A precondition for the two owners being like one is that each of them has a nisab.]

26.6c. Settlement is according to the state of herd

When the zakat of the year is due, animals which were mixed together are not to be separated nor those which were separate to be mixed out of fear of paying the zakat.

[That is when the end of the year approaches. Ibn Shash said that that is when joining or separaing would reduce the zakat.]

26.6d. If the zakat is less because of mixing

If the zakat paid is less because the two herds were separated or mixed, the herds should be restored to their prior condition.

[When it is done to avoid more zakat. As when two men each have a hundred, and so they separate at the end of the year and two sheep are obliged. The obligation on them is three. It is the same for joining: three men each has forty and they join at the end of the year so that one sheep is obliged on them: the obligation on them is three sheep.]

26.6b. Those who do not have to pay

There is no zakat due from someone whose share does not reach the number subject to zakat.

[Because of the words of the Prophet, "There is no zakat on less than five camels." They must be liable for zakat (and so they are not slaves or unbelievers) and the animals have the same stud, shepherd, resting place

at night, pasturage, watering-place and milking place, and the partnership is by friendship, not avoidance of zakat.]

26.7. PROHIBITED FORMS OF PAYMENT

26.7a.Baby animals

A baby sheep or goat is not taken to pay zakat. However, it is counted in numbering the owner's flock. Baby calves or camels are not taken, but they are counted in numbering the herd. Similarly, exempt from being taken as zakat are young billy goats, thin old females, pregnant females, a ram used for stud, a sheep or goat fattened for slaughter, a female nursing its young, nor the best of a man's property.

[Zakat is not taken from the best or worst of a man's property. One is to protect the rights of the wealthy and the other to protect the rights of poor. If the owner gives the best cheerfully, it is permitted. If he gives the worst, it is not acceptable. If all the property is good or bad, he is obliged the middle. If he refuses, he is forced to pay it.]

26.7b. Not taking cash or goods in lieu

For zakat on animals, one may not collect goods or the price of the animal in place of the animal. If the collector forces the owner into giving the price of the animal or something else, that satisfies it, Allah willing.

[Something else would be like grains. Ibn al-Hajib states that paying the price voluntarily does not satisfy it. But it is taken by force, then it satisfies it in the well-known position.]

26.7c. Debts do not cancel this duty

A debt does not cancel one's obligation to pay zakat on grain, fruit or animals.

[It was mentioned earlier.]

SUPPLEMENT about a number of important questions:

[1. He must pay it with the intention of paying zakat. If he pays it without the intention of paying zakat, it does not satisfy it unless he is forced, and then the intention of the forcer is enough.

2. It is not transferred from the place in which it is obliged unless there is no one there to pay it to. Then it is transferred to the closest place to it.

3. It is paid at the time when is obliged. If it is delayed, it is allowed but he commits something unlawful.

4. He pays it in its eight categories which Allah Almighty mentioned when He says, "*Collected sadaqa is for: the poor, the destitute, those who collect it, bringing people's hearts together, freeing slaves, those in debt, spending in the way of Allah, and travellers*." (9:60)]

CHAPTER 27: ON THE ZAKAT AL-FITR

27.1. ITS RULING

The zakat al-Fitr is an obligatory sunna which the Messenger of Allah made compulsory for all Muslims, whether old or young, male or female, free or slave.

[It is a confirmed sunna. It seems that is is obligatory in the School. There is disagreement about the words "the Messenger of Allah made it compulsory". It is said that it means he stipulated it and so it is sunna, and that does not contradict his words, "On all, whether old or young." The shaykh uses the terms for what is less than obligatory. The Messenger of Allah said, "Zakat al-Fitr after Ramadan obligatory for the Muslims - slave or free, male or female, young or old, being a sa' of dates or a sa' of barley." It is said that it means that he made it compulsory. That what the author of *Mukhtasar* thinks.]

27.2. ITS AMOUNT

27.2a. Its measure

Its amount is one sa'a measuring by the sa'a of the Prophet, may Allah bless him and grant him peace.

[It is four mudds by the mudd of the Prophet. A sa'a is a measure of volume equivalent to 4 mudds. A mudd is the amount contained by a man's cupped hands.]

7.2b.What it is paid in

It should be paid in kind using the staple food of the people of the region, which might be wheat or barley or sult barley or dates or dried cheese or raisins or millet or sorghum or rice. It is also said that if the staple food of the people is al-'alas, which is a small grain similar to wheat, that the zakat al-fitr can be paid with that.

[The land where the zakat is paid, whether their food is like his food or better or worse. If his food is better than their food and he pays the zakat in it, that is allowed. If it is less valuable than their food, and he pays it with it out of avarice, then the apparent words of Ibn al-Hajib mean that it does does not satisfy the requirement by agreement.

If he pays it from other than these nine types, it is not allowed in the well-known position. This is when some or all of them exist as foods. If they do not exist, all or some, and other things are used as food, they satisfy the requirement.]

27.3. WHO PAYS THE ZAKAT OF CHILDREN AND SLAVES

The zakat al-fitr of a slave is paid by his master and that of a young child, who has no personal wealth, by his father. A man has to pay the zakat of every Muslim for whose maintenance he is responsible, and he should also pay for his mukatab (partially freed slave) because even if he is not responsible for his maintenance, the mukatab is nevertheless still his slave.

[The father pays for the child who has no wealth. It is understood from this that he does not pay for an adult. It is not absolute: if he is male, adult and wealthy, he does not pay for him. If he becomes adult within the time it is due, he prays for him. He pays for the female, even if she is adult, until she marries. What is understood by "no personal wealth" is

that if he has wealth, he does not pay for him. That is the case. It is paid by Muslims, but not unbelievers.]

27.4. When it is paid

It is recommended to pay the zakat al-fitr at daybreak on the day of the 'Id al-Fitr.

[In Muslim it reports that the Prophet used to command that the zakat al-fitr be paid before people went out to the place of prayer. This is the time of recommendation and not the time of obligation. There are two well-known statements about that. One is that it becomes obligatory at sunset of the last of the day of Ramadan and ends at the rising of dawn on the day of the 'id. It is permitted that it be paid a day or two before the day of fitr. It is not cancelled when its time passes because it is a right of the poor for which liability remains. He does not sin as long as the day of Fitr still remains. If he delays it when he is able to pay it, he sins. He gives to a free poor Muslim. He does not give it to an unbeliever, nor to a wealthy man.]

27.5 Other Things About 'Id al-Fitr

27.5a. Breaking the fast before the prayer

On the morning of the 'Id al-Fitr, it is recommended to break your fast before leaving for the prayer-place, whereas on the morning of the 'Id al-Ad-ha it is recommended not to do so.

[Break it with anything, but it is best that it be broken with dates, an odd number, based on what the Prophet did. It is not recommended to break it on the morning of 'Id al-Adha. Then it is recommended to refrain until you return from the prayer so that you can eat from the sacrifice since that it what the Prophet did.]

27.5b. Varying the route

On both 'ids, however, it is recommended to go to the prayer by one route and return from it by another.

Chapter 28: On Hajj and 'Umra

28.1 The Obligation of the Hajj

28.1a. The meaning of hajj

[Each word has a linguistic and technical meaning. Linguistically, *hajj* means to aim for something once or to do something time after time or a simple intention. This usage is like the words of the Almighty, "And when We made the House a place to return to, a sanctuary for mankind." (2:125) Its technical usage designates an act of worship which contains ihram, standing, tawaf, sa'y and other things.

Linguistically *'umra* means to visit. Linguistically it designates an act of worship which has ihram, standing, tawaf, sa'y which begins like the hajj.]

28.1b. The word Bakka

Going on hajj to the Sacred House of Allah, situated in Bakka,

["Bakka" is used used to honour it.]

28.1c. Preconditions of its obligation

is an obligation for every free adult Muslim, who is able to find a way to do it, once during his lifetime.

1. Ability

[It is obligatory when five preconditions are meant. He indicates on of them: who is 'able to find a way to it', i.e. to the House of Allah.

2. Islam

Islam is a precondition for the obligation. That is what Ibn al-Hajib and the author of the *Mukhtasar* say. It is a precondition for its validity. According to the first, disbelief is a barrier to its obligation, and according to the second, to its validity.

3. Freedom

The third precondition is freedom.]

4. Adulthood

The fourth is adulthood. The precondition of adulthood is not confined to the hajj.]

5. Sanity

The final precondition remains, which is sanity. The hajj is not obliged for someone who is insane.]

[Hajj is obligatory for the one who is legally responsible and meets the preconditions. If someone who is not legally responsible makes the hajj, his hajj is valid but the obligatory hajj is not achieved for him.

Its obligation is indicated by the Book, Sunna and consensus. Whoever denies that it is obligatory is an unbeliever. If anyone affirms its obligatory nature but refuses to do it, will be called to reckoning by Allah. Hajj is obligatory on the one who meets the preconditions once in his lifetime by consensus.]

28.1d. The meaning of "way"

What is meant by "way" is a safe route, sufficient provisions to reach Makka, sufficient strength to be able to get to Makka and a good state of health.

[This expression covers four things:

1. It must be a safe route. If he fears for himself, it is agreed that the obligation is cancelled. If he fears for some of his property and injury, it is cancelled for him. If he would not be injured, it is cancelled for him by one statement.
2. Provisions. Apparently he only considers what will enable him to reach it. That is what al-Lakhmi said. He qualified that by saying, "Unless he knows that if he remains there, he will die and he fears for himself. Then he considers what is adequate for the return journey to the nearest place he can stay in it and sell to buy provisions and other things.
3. Physical ability. The third is the strength to arrive on foot or riding. When the blind person finds someone to guide him and there is no enormous difficulty, then it is obliged for him.
4. Health. Some say it is a part of strength and some say it is a fourth precondition. Hajj is not obligatory for the sick person, even if he has what can find something to ride.

The hajj has obligations, sunnas and excellent parts. The shaykh did not clarify them. He described the hajj in the actual order in which it is performed. We will , Allah willing, point the various parts. One of the obligations is ihram.]

28.2 IHRAM

28.2a Its miqats

You should go into 'ihram' at the appropriate miqat.

[It has two miqats: one in time and one in place.]

1. The Miqat of time
[The miqat of time was not mentioned by the shaykh: that is the months of Shawwal, Dhu'l-Qi'da, and all of Dhu'l-Hijja in the famous position. It is said it is only the first ten days of Dhu'l-Hijja. Disagreement arises when the the Tawaf al-Ifada is delayed. In the famous position, sacrifice is not obliged for him unless it is delayed to Muharram. In the other position, it is when it is knowingly delayed to the 11th. The defined time is the time of the hajj, including entering ihram and ending it, not only ihram only. If he goes into ihram before Shawwal, that is disliked.]
2. The Miqat of place
[If he goes into ihram before that, it is disliked. It is recommended not to delay going into ihram because hastening to obey is better. It varies according to the different states of those going into ihram. The miqat of the Makkan is Makka. It is recommended for him to go into ihram from inside the mosque. His miqat for 'umra and for qiran is coming out ot ihram because every ihram must must combine being both in and out of ihram. The miqat of someone from outside Makka varies and it is one of five places with the differences of fiqh, about whether he goes into ihram for hajj or 'umra.]

28.2b Physical miqats

The miqat for the people of Syria, Egypt and North Africa is Juhfa, but if they come via Madina, it is better for them to go into ihram at the miqat of the people of Madina which is Dhu'l-Hulayfa. The miqat of the people of Iraq is Dhat Irq and that of the people of Yaman, Yalamlam. The people of Najd go into ihram at Qarn. If any of these go via Madina they too should go into ihram at Dhu'l-Hulayfa since they will NOT be passing their own miqat again.

[Juhfa is a town about 7 stages from Madina and 3 or 5 from Makka. If people of these regions come via Madina, they adopt the miqat of the

Madinans. Dhu'l-Hulayfa is about 6 miles from Madina. It is the furthest of the miqats from Madina. There is about 10 stages from Makka. Iraq also includes places further on like Iran. Dhat 'Irq is a ruined town two stages from Makka. Yalamlam is a mountain of Tihama two stages from Makka. Qarn is a small mountain apart from the mountains opposite Makka and two stages from it. Those who make hajj by sea from the Egypt and the like go into ihram when they are opposite Juhfa.]

28.2c How to go into ihram

When going into ihram you should do so straight after praying, whether that prayer is fard or nafila. You start by saying, "*Labbayk Allahumma Labbayk, Labbayk la sharika lak inna'l-hamda wa ni'mata laka wa'l-mulk, la sharika lak*." (At Your service, O Allah, at Your service. At Your service, none can be associated with You, at Your service. All praise and blesssing is due to You as is the Kingdom. None can be associated with You.)

[It is sunna to say this. In short,the talbiyya is obligation intself. So if you were to omit it, you are obliged to sacrifice. It is sunna that it accompany going in ihram. "*Labbayk* " means is answer after answer, The answer is in response the words of the Almighty, "Am I not your Lord?" They said, "Yes" (*bala*). It also refers to the fact that when Ibrahim asked permission for people to make hajj and he called out, "O people! Allah has a House so make hajj," they answered him from the east and the west of the earth and from the wombs of the women and the loins of the men. Some people prefer to stop at "*mulk*" and start a new sentence with "*la sharik*".]

28.2d The intention

You say this and make the intention to do Hajj or 'umra according to what you are intending to do.

[Ibn 'Umar said according to the position of Ibn Habib ihram begins by the intention and the word, i.e. the talbiya. He considers the talbiya a precondition for its validity and so it has the same position as the takbir al-Ihram in the prayer. Khalil says that the reality of ihram is to enter with the intention into one of the two practices with the word connected to it, like the talbiya, or an action connected to it, like turning to the road. Ihram does not begin simply by the intention. There must be the word, like the talbiyya, or an action, like turning to the road. One of the special qualities of the talbiyya is is not that it is a preconditon for the validity of ihram as Ibn Habib stated. It revolves around the existence of one of two - word or deed. It is recommended to confine onself to the talbiyya mentioned because it was the talbiyya of the Prophet.]

28.2e Performing a ghusl

Then you should have a ghusl

[Even if a woman is menstruating or bleeding after childbirth since it is sunna. This is based on what at-Tirmidhi reported: the Prophet stripped for ihram and performed a ghusl before he assumed ihram. There is no sacrifice for omitting it either deliberately or out of forgetfulness. That is also the case with the rest of the ghusls of the hajj. The evidence that it is sunna for the woman in menstruation or bleeding is what comes in the Muwatta' that Asma' gave birth and when Abu Bakr mentioned that to the Messenger of Allah he said, "Tell her to perform a ghusl and then enter ihram." It is recommended for the one who wants to assume ihram for hajj or 'umra to clip his nails, shave his private parts and trim his beard, but he does not shave his head since dishevelment is desirable.]

28.2f Removing stitched clothing

and remove any clothes containing stitching before actually entering the state of ihram.

[It is sunna for men to remove any stitched garments and to wear a wrapper, cloak and sandals.]

28.2g A ghusl when entering Makka

It is also recommended to have a ghusl when you enter Makka.

[This is for the one in ihram, who is not menstruating or in lochia. It is best that it be at Dhu Tuwa since that is what the Prophet did.]

28.2h Continuing the talbiya

You should continue to recite the talbiya (as mentioned above) after all prayers, at the summit of every rise and every time you rejoin your travelling companions.

[The muhrim does the talbiya after the obligatory and nafila prayers, and at every high place and in the valleys. His 'travelling companions' are those he camps and travels with. He also says it when he wakes up from sleep. The one saying the talbiya does not return the greeting until he finishes. He is recommended to raise his voice in the talbiya to a medium level. The woman should only be able to hear herself. It is not disliked for a woman in menstruation or lochia to say the talbiya.]

28.2i Not being excessive in the talbiya

However, you should not go to excess in it.

[This is not recommended or obligatory. Indeed, it is disliked by Malik. This means doing it a lot constantly so that he does not cease that. When he does not cease, he is not silent so that he misses the cermony.]

28.3 ENTERING MAKKA

28.3a Stopping the talbiya and restarting it

When you enter Makka you stop reciting the talbiya until after you have completed your tawaf and sa'y. Then you start doing it again until midday on the Day of 'Arafa, if you have got to the place of prayer on 'Arafa.

[It is related that he stops it at the Jamra al-'Aqaba. Al-Lakmi inclined to what is in Muslim that the Prophet continued to do the talbiya until he stoned the Jamra al-'Aqaba.]

28.3b. Where to enter Makka

It is recommended to enter Makka through the pass of Kada' in Upper Makka and to leave it by Kuda, but it does not matter if you do not do this.

[This is because the Prophet did that and the Companions after him did so as well. It is recommended to enter it in the day since the Prophet did that. If someone enters before sunrise, he does not do tawaf. If he does tawaf, he does not pray until sunrise. Nafila prayers are lawful. When a woman arrives in the day, she is recommended to delay tawaf until night. When someone leaves, it is recommended that he go by Kuda,which is the bottom of Makka. There is no sin if he does not do this, because he has not omitted something obligatory.]

28.3c. The first thing done after entering Makka

Malik said that all those entering Makka should first of all go straight to the Masjid al-Haram, which it is recommended to enter by the door of Bani Shayba.

[And no where else unless it is unavoidable - like tying up one's mount and having a little food. Delay is bad manners. This is now known as the Door of Peace. That is because the Prophet did that. After someone enters, he should do tawaf by making the intention and make for the Black Stone.]

28.4. The Tawaf

28.4a Greeting the Black Stone

You should greet the Black Stone by kissing it, if possible, or if you cannot then by touching it and putting your hand to your mouth without kissing it.

[If he cannot touch it with his hand, he touches it with his stick and then places it to his mouth without kissing it. A stick is not adequate when the hand is possible and nor the hand when kissing is possible. This kissing is a sunna at the beginning of the tawaf and recommended in the rest of it. The evidence for kissing is in the two Sahih collections that 'Umar kissed it and said, "I know that you are a merely a stone which can bestow neither harm nor benefit. If it had not been that I had seen the Messenger of Allah, may Allah bless him and grant him peace, kiss you, I would not have kissed you."]

28.4b The Tawaf of Arrival

Then you do tawaf keeping the House on your left, going round it seven times.

[After kissing the Black Stone, you perform Tawaf of Arrival. It is obligatory for every one who assumes ihram, whether he is one of the people of Makka or elsewhere. When he goes into ihram from the Haram, he does not do the Tawaf of arrival since he is not arriving.

Tawaf, whether it is a pillar, obligation or desirable practice, has obligatory parts, sunan and recommended parts.]

28.4c The Obligatory parts of Tawaf

[It has six obligatory parts, the first ones being the preconditions for the prayer:

1. Purity from ritual impurity and uncleanness, and covering the private parts. If he breaks wudu' while performing it, he purifies himself and begins again, based on the famous position. Speech is permitted in it since the Prophet said, "Tawaf of the House is prayer although Allah has allowed speech in it, so one should only speak good."
2. Tawaf is done inside the mosque.
3. He puts the House on his left. If he puts it on his right, his tawaf is not valid and he must repeat it. He should take care when he begins the tawaf and stand a little before the corner so that the Stone is on his right of where he stands. That is what al-Fakhani said. If he does not completely encompass the Stone, he has not completed the first circuit. He should take note of that: the ignorant often err in that. His tawaf is outside the House, and the one who kisses the Black Stone must only walk after he had stood upright as before. He is not permitted to kiss it and then walk with bowed head or his hand so that he does not achieve some of the tawaf. All his body would not be outside the House because part of his body is on the buttress, which is part of the House and thus his tawaf would not be valid.
4. Seven circuits. He begins from the Stone and ends at the Black Stone. If he begins from the Yemeni corner, he ends with it and must sacrifice.
5. Continuity. If he forgets a circuit and then remembers soon after and has not broken wudu', he returns to it, as he would to the prayer. If it is a long time, then the tawaf is invalid by analogy with the prayer.
6. Praying two rak'ats after it.]

28.4d Its sunan

Three times at a fast pace between walking and running and four times at a normal walking pace.

[Its sunan are four:

1. One is the fast pace three times, which is going faster than walking but not running. It is sunna for the man and not the woman, even if he is ill. He owes no sacrifice for omitting it, even if he able to do it. Then four circuits are done walking. The evidence for all of this is that the Prophet did it.
2. Supplication, which is not defined.
3. Kissing the Black Stone at the beginning of the tawaf as was said.
4. Kissing the Yemeni Corner in the first circuit.]

28.4e Recommended parts

Every time you pass the Black Stone, you greet it in the way we have already mentioned and say 'Allahu akbar'. You do not kiss the Yamani corner but you greet it by touching it with your hand which you then raise to your mouth without missing it.

[Its recommended parts are four:

1. Kissing the Black Stone in the beginning of every circuit except the first if you are able to do so. Otherwise you place your hand on it and then on your mouth without kissing it. You do this while saying the takbir.
2. Kissing the Yemeni corner at the beginning of every circuit other than the first.
3. Going close to the House for men rather women.

4. Supplication at the Multazam after finishing the tawaf. The Multazam is between the Yemeni corner and the door. He hugs it and makes intense supplication.]

28.4f Two rak'ats at the end

When you have finished your tawaf you pray two rak'as at the Maqam Ibrahim. Then if you are able to you greet the Black Stone once more

[His words include an obligation and two recommended parts. The obligation is to do two rak'ats after tawaf . The two recommendations are doing it at the Maqam and connecting them to tawaf. It would mean that there is no sacrifice at all on account of not connecting them: but that is not the case. There is a sacrifice in some instances.Nor is te recomendation absolute: it is recommended for some and obligatory for some in which case there is a sacrifice as a consequence of omitting it.

So someone who does not do two rak'ats until he is far away or has returned home must absolutely perform them. If they are part of an obligatory tawaf he owes a sacrifice. If they are from another tawaf, then no sacrifice is obliged for that. If he has not gone far or returned to his land and has not broken his purity, then he only performs two rak'ats. If his purification is broken deliberately, he does the tawaf and two rak'ats, even if they are not obligatory and repeats the tawaf, the two rak'ats, and sa'y. In other than that he repeats it. Does he repeat the tawaf or not? The apparent meaning is to prefer the second, and he does not kiss the Yemeni corner. After Kissing the Black Stone it is recommended to go to Zamzam and drink from it.]

28.5. SA'Y AT SAFA AND MARWA

28.5a. Beginning sa'y

and then go off to Safa where you stand and make du'a.

[Al-Aqfahasi and Ibn 'Umar said that it is recommended to leave by the door of Safa since it is closest to Safa. Zarruq transmitted from Ibn Habib that the Prophet went out by it.]

28.5b. Going to Marwa

From there you walk to Marwa going faster across the bottom of the valley. When you reach Marwa you stand for a time making du'a and then walk back to Safa. You do this seven times, standing four times on Safa and four times on Marwa.

[He should walk quickly in the bottom of the valley, particularly when going to Marwa: this is the sunna for men rather than women. The valley is what is between the two green markers which are on the wall of the Masjid al-Haram to the left going to Marwa. The first of them is at the corner of the mosque under the minaret and the second is opposite Ribat al-'Abbas. The supplication made on Marwa and Safa is not specified. Stopping there is sunna.

This sa'y is one of the pillars of the hajj and 'umra which is necessary and no sacrifice or anything else can compensate for its omission. Its obligatory nature is indicated by the Book and Sunna. It has preconditions, sunan and recommended parts.

Its preconditions are four:

1. <u>The proper order</u>, which is that sa'y is done after tawaf. If he begins with sa'y, he returns and does sa'y .

2. <u>Continuity</u>, If he sits for a long time and becomes like someone who stops, he must begin the sa'y again. If it is a short stop, it does not impair it. If he is afflicted by incontinence he does wudu' an d builds on what he has done. Speech in it is less than speech in tawaf, i.e. he should only speak softly.
3. <u>Completing the number</u>: seven. If anyone omits a circuit of hajj or 'umra, whether the hajj or 'umra are sound or unsound, he should return for that from his land. If anyone omits omits a cubit of the sa'y, that is not adequate.
4. <u>It should be preceded it by a sound tawaf</u>. It is not a precondition that it be an obligatory one. Any tawaf is enough according to Ibn al-Hajib and that is what Khalil understood from the *Mudawwana*, but is preferred, Zarruq said that the famous position is that it is a precondition that it is obligatory like the Tawaf al-Ifada and Tawaf of Arrival.
Then after he finishes the sa'y the time of Standing is near.]

28.6. At Mina

On the Day of Tarwiya (8th Dhul Hijja) you go to Mina where you pray Dhuhr, 'Asr, Maghrib, 'Isha' and Subh

[It is called Mina because Ibrahim wished (*tamanna*) in that the command to sacrifice his son would be taken from him. It is said that it is because the blood is shed (*amna*) there. It is 6 miles from it Makka. It is recommended to go out to it so that when you reach it, the time of prayer will be near. It is recommended to spend the night there. The basis for this is that the Prophet did it. Ahmad related that the Prophet prayed 5 prayers at Mina: Dhuhr and Subh and what is between them. If someone fails to spend the night there, that is disliked, but he does not owe a sacrifice for it.]

28.7 AT 'ARAFAT

and then you go to 'Arafat.

28.7a Its time

[When you have prayed Subh on the ninth day at Mina, it is recommended not to leave it until after sunrise. Then you go to 'Arafat, which is the place of standing. When you reach 'Arafat, it is recommended that the camp at Namira, which is at the end of the Haram and the beginning of the non-Haram.]

28.7b Leading up to the Standing

During this time you continue to recite the talbiya ceasing when the sun has passed its zenith on the Day of 'Arafat and you have reached the place of prayer there. You should have a ghusl before going off to do the prayer on 'Arafat

[From the time you leave from sunrise you continue talbiya. The place of prayer is the mosque of Namira. You should perform a ghusl after midday before going out. You do not rub thoroughly in the ghusl, but only pass the hands over. This is the last of three ghusls of hajj. It is for standing, not for prayer, and the woman who is menstruating or in lochia should do it as well.]

28.7c Joining Dhuhr and 'Asr

where you join Dhuhr and 'Asr with the Imam.

[They are joined and shortened. He adds in the *Mudawwana*, with two adhans and two iqamas and recitation is silent, not aloud, even if it coincides with Jumu'a because he is praying Dhuhr and not Jumu'a. If

someone misses joining with the Imam, he joins the prayers wherever he is. Shortening at 'Arafa is for the sunna.]

28.7d The standing

Then you accompany him to the standing place at 'Arafat and stay there with him till the sun has set.

[This shows that the Standing of 'Arafa is not its prayer place. It is valid to stand in every part of it although it is recommended to stand at the large boulders lying at the base of the Mount of Mercy, the mountain in the middle of 'Arafat. That because it is where the Prophet stood. The standing begins after midday.

He stands with him until sunset according to what al-Fakhani and others said and others which would not include any part of the night. The School is that it must include a part of the night. Ibn al-Hajib said, "The minimum obligation in the pillar of standing is to be present part of the night in a part of 'Arafa wherever he wishes except for the bottom of 'Uruna. In short, the fiqh is that standing at 'Arafa after midday is obligatory which can be remedied by sacrifice. The standing part of the pillar is a part of the night after sunset. What is considered as standing is the the most perfect meaning. If he passes through 'Arafat at night and does not stand, that is adequate with two conditions: he knows that this place is 'Arafa and that he intends to be present at 'Arafa. This does not include the one who passes not knowing that this place is 'Arafa. It is recommended to stay there mounted since the Prophet did that. It is recommended to glorify and praise Allah, say the shahada and the prayer on Sayyiduna Muhammad, and make supplication. It is recommended to not fast so as to be strong in worship.]

28.8 At Muzdalifa

28.8a Going to Muzdalifa

Then when he moves off to go to Muzdalifa you go after him, praying Maghrib, 'Isha and Subh with him at Muzdalifa.

[After sunset on the day of 'Arafa when the night is well advanced, you set out with the Imam for Muzdalifa. If you go before him after sunset, then you abandon the best course. When you arrive there, the first concern is to perform the prayer shortly after stopping. You pray the prayers with the Imam at Muzdalifa joined and shortened, except for the people of Muzdalifa. The School is that this joining is sunna. When dawn comes, it is recommended for him to pray Subh with the Imam at the beginning of the time. So it is recommended to spend the night at Muzdalifa, as is stated in the *Mukhtasar*. Dismounting is obligatory. It is not enough to make the camel kneel: you must dismount. Whoever fails to dismount without excuse until dawn owes a sacrifice. Whoever omits it for an excuse owes nothing.]

28.8b Standing at Mash'ar al-Haram

After that you stand there with him at the Mash'ar al-Haram

[It is recommended in the well-known school to stop with him facing the House. Mash'ar is a mountain at Muzdalifa. It is called that because in the Jahiliyya they used to mark their sacrifices there. This is the day of Sacrifice. He prays Subh or stops at Muzdalifa until the sun has risen.]

28.9 Back to Mina

28.9a Crossing Muhassir

and shortly after sunrise, you go to Mina hurrying your mount across the Valley of Muhassir.

[Its apparent meaning, as the *Mukhtasar*, is that it is permitted to continue standing at the Mash'ar until the whitening of the sun. In the *Mudawwana*, no one stays at the Mash'ar until sunrise or whitening, but moves on before that. The Sahih indicates the first. It says that the Prophet "came to the Mash'ar al-Haram, faced qibla and praised Allah, proclaimed Him great, unified Him and prayed to Him. He remained standing until it was very bright." The one riding is recommended to make his mount hurry. Muhassir is a valley between Muzdalifa and Mina. The path is between them. If he is walking, he walks quickly. A woman does not hurry. This hurrying is an act of devotion.]

28.9b Stoning the Jamrat al-'Aqaba

When you get to Mina you stone the Jamrat al-'Aqaba using seven small pebbles

[i.e. you begin to stone them first when you reach Mina in whatever state you are, riding or otherwise. It is the end of Mina on the Makkan side. It is called Jamra from the name of what is thrown at it: stones. Stoning is done from dawn to sunset on the Day of Sacrifice and the time of making it up covers all of the days of sacrifice. Indeed, the night after every day is for making up for that day. There is no disagreement that sacrifice is obliged for missing it. Missing it occurs at sunset of the fourth of the days of Mina. They disagree about its obligation whether the hajj is invalidated by missing any of the jamras.

Stoning has preconditions for its validity. One of the preconditions of validity is that he puts the stone between his thumb and forefinger. It is said that he holds it with his thumb and middle finger. They are thrown one after the other, Less than that is not adequate, even if he throws seven pebbles at once reckoning each of them to be one of the stones he throws. Mud is not acceptable nor are minerals like iron. There is disagreement about the size of what is thrown. That which most shaykhs say is that it is like a date stone.The very small, like gravel is not enough.]

28.9c What is said during the stoning

and saying "Allahu akbar" with each pebble as you throw it.

[This is recommended. If he does not say that takbir, the stoning is enough, and he continues to throw the pebbles. It is disliked for him to take a stone and break it and to make pebbles. It is desirable to pick them up from the earth and that they be pure. The stoning should be from the bottom of the valley, Stoning the Jamra al-'Aqaba makes everything lawful except women and hunting. It is called the lesser coming out of ihram. The Tawaf al-Ifada makes everything lawful for him, even women and hunting. It is called the greater coming out of ihram.]

28.9d Sacrifice

Then, if you have a sacrificial animal with you, you make sacrifice.

[He stands with it at 'Arafa and Mina. All are places for sacrifice except what is beyond the Jamra al-'Aqaba and the Imam does not wait there since the 'id prayer is not there.]

28.9e Shaving the head

Then you shave your head.

[After the sacrifice. Or you can shorten it if a a man's hair is not matted or plaited. If it is matted or plaited, then it is shaved. Shaving is only obliged in those two cases. The entire head must be shaved. Doing part of it is like not doing it. If someone has something wrong with his head so that he cannot shave, he sacrifices. As for the woman, the sunna for her is to shorten her hair.]

28.10 Back to Makka

After that you go the House and do Tawaf al-Ifada going round seven times and finishing with the prayer.

[It is the last of the four pillars of hajj which is not mended by sacrifice and by it all that was forbidden becomes allowed, even women and hunting. Taken from his words is that it is better to go to do it soon on the Day of Sacrifice. That is indeed the case. But if you delay it past the days of tashriq, sacrifice is not obliged. Sacrifice is obliged if you leave it until Dhu'l-Hijja is over in the famous position. A counter statement is that if he delays it to the 11th, then he is obliged to sacrifice. The explanation of "going around" is that he does not hurry in this tawaf or do sa'y because he did sa'y after the Tawaf of Arrival. This in respect of the one who is not pressed for time. As for the one who was pressed for time so that it was not feasible for him to do the Tawaf of Arrival, it is desirable that he trots in the Tawaf of Ifada .]

28.11 Back to Mina

28.11a Staying for three days

You then stay for three days at Mina.

[Three days and nights if he is not in a hurry. If he omits most of the nights, he is obliged to sacrifice. Shortening of the prayer is not prescribed.]

28.11b. Stoning the jamras

On each day after the sun has passed the zenith, you first stone the jamra nearest Mina using seven small pebbles and saying, 'Allahu akbar' with each pebble thrown. You then stone the other two jamras with the same number of pebbles again saying "Allahu akbar" as you throw each one. After stoning the first two jamras you stand and make du'a but after stoning the jamra al-'aqaba you do not stand but move straight off.

[On these three days. He does the middle one second and finishes with the third, which is the Jamra al-'Aqaba, using seven stones each time. Al-Aqfahasi said that "after the zenith" means before the prayer. If he stones before the zenith, it is not enough and he repeats it after midday, as when he stones the Jamra al-'Aqaba before Fajr.]

28.11c Leaving for Makka

When you have finished stoning on the third day, making four days including the 'Id, you leave for Makka

[Ibn 'Umar said that he does not stay at Mina after stoning on the third day. It is recommended to stop at Muhassab and pray Dhuhr, 'Asr, Maghrib and 'Isha' there and to enter Makka at night since the Prophet did that as the Companions after him. If he prays Dhuhr before it, he owes nothing, and if he does not stop, he does not have to sacrifice anything.]

28.11d The completion of the hajj

and your hajj is complete.

[If he means by complete the sunan, obligations and excellent parts, there still remains the Tawaf of Farewell. If he means the obligations, they are complete before that. He must mean its obligations and sunan and so he did not consider the Tawaf of Farewell because it is not particular to the hajj. It is done by whoever leaves Makka after the hajj or any other reason.]

28.11e Hurrying up departure from Mina

If you want, you can speed up your departure by staying only two days at Mina, leaving after finishing stoning on the second day.

[This is when the sun has not set on the second day. When it sets, there is no hurrying because the night obliges camping there for the stoning of the day. If the sun has set, it is as he is obliged to do the third day.]

28.12 LEAVING MAKKA

When you are about to leave Makka you do the Tawaf of Farewell and the two rak'as after it and then leave.

[This tawaf is recommended and sacrifice is owed for omitting it. When he finishes it, he prays two rak'ats. Ibn Farhun said that the Tawaf of Farewell has two rak'ats and if he omits them until he is far away or arrives home, he prays them then and owes nothing. If he is near and still in a state of purity, he returns to them. If he has broken wudu', he purifies himself and begins the tawaf again and then prays them.]

28.13 'Umra

For 'umra you do the same as we said at the beginning of this chapter up until when you have completed the sa'y between Safa and Marwa. You then shave your head and your 'umra is complete.

[This shows that its pillars are three: ihram, tawaf and sa'y. It has two miqats: time and place. The time is all time, and the place is outside the Haram, whether he is foreign or resident in Makka. It would appear from his words then that 'umra is not complete until he shaves his head. That is not the case because Malik said that his 'umra is compete by tawaf and sa'y. Shaving is one of the preconditions of perfection, not one of validity, and so that is no contradiction in its being mandatory. What he meant by the end of the 'umra is its perfection and so there is no contradiction.]

28.14. Cutting the hair

28.14a. For men

For both hajj and 'umra it is better to shave your head but shortening the hair is acceptable in which case the hair should be shortened all over the head.

[This is not absolute: shortening is preferable in the tamattu' hajj so that the dishevelment remains for hajj. Zarruq stated that. The practice of shaving is only complete by shaving the entire head since the Prophet did that. Ibn al-Hajib said that the sunna in shortening for men is to cut close to the roots. The minimum is to cut off something from all the hair. It is not enough cut some of all the hair, even the amount of a finger. If he shortens only some, he misses the sunna.]

28.14b. For women

The sunna for women is to shorten the hair.

[It is disliked for her to shave and it is said that it is haram because it is mutilation. She shortens her hair. The basis for that is what Abu Dawud related that the Prophet said, "Women do not have to shave. Women shorten their hair."]

28.15 Requirements of Ihram

28.15a. Killing harmful animals

There is no harm in someone in ihram killing a rat, snake, scorpion or such like nor in killing a dangerous dog or any other dangerous animal such as a jackal or a lion.

[It is permitted to kill these categories. Similar to rats are creatures which chew clothes, like weasels. Snakes and vipers includes hornets. A dangerous dog is one which will attack. Dangerous animals include hyenas and tigers.]

28.15b. Killing harmful birds

You can also kill crows and kites if you fear they will harm you but not any other birds. [You can kill birds whose harm is feared, like crows and kites.]

[These two types are killed, even if they do not initiate harm, large or small. Other birds, harmful or not, are not killed. That is one of two statements which Ibn al-Hajib reported. What is preferred of the two is to kill them if they cause harm.]

28.15c Avoiding women

When doing hajj or 'umra you should avoid women,

[This is an obligation .Avoidingwomen means avoiding enjoyment of them by intercourse or anything else. That is obligatory since it absolutely invalidates the hajj, whether it is genital or anal, human or not, intentional, out of forgetfulness of ignorance, with ejaculation or not, whether it obliges the hadd or mahr or not, with an adult or not. It is clear from what they say, as in al-Ahjuri, even if ghusl is not obliged,

The second sunna that he assumes ihram for makingup hajj. That does not spare him the missed one and its ihram. The second is ineffectual which has no place while he is in a false ihram and his ihram is not for making it up. He is obliged to complete it when he has done the Standing in the year in which he corrupted it. If he does not catch it, then he is commanded to come out of it by doing 'umra He is not permitted to remain in ihram by agreement because it is continuing the corrupted while he is able to be free of it.

As for actions which precede intercourse, like the kiss and the embrace, they are unlawful. If he kisses or embrces and has ejaculated, it is invalidated. Otherwise he should sacrifice a camel. As for the look and the thought, they do not entail invalidation by the emission of sperm because of them unless both of them were for pleasure and continued. As for its emission by simply looking or the thought, there is only sacrifice for it. These are the judgements for the emission of sperm. It obliges a sacrifice absolutely whether it emerges after constantly looking, thought, kiss or touch or not.]

28.15d Avoiding perfume

[He must avoid perfume in hajj or 'umra like rose or jasmine, for which there is no fidyat, or feminine perfume, which is what has a

substance which stays on the body and clothes, like musk, and saffron. There is *fidya* for it, even if it is quickly removed.]

28.15e. Avoiding stitched clothing

stitched clothing,

[There is no disagreement that they are unlawful for men but not women. What is meant is all that surrounds the body or part of it it.. It is also unlawful for him to wear turbans, trousers and burnooses.]

28.15f Avoiding hunting

hunting,

[He must also avoid hunting in land,whether the reason for hunting is to eat meat like the antelope, and wild ass or not, like monkeys without difference between them being tame or wild, owned or permitted. There is no exception for that except what is transmitted in the hadith: the kite and crow, rate, scorpion, and dangerous dogs.]

28.15g Killing insects

killing insects

[He does not kill lice or remove them from his body.]

28.15h. Removing hair from the body

and removing any hair from your body.

[Like clipping the moustache which resembles removing hair. If he removes any of his hair, he owes a handful of grain.]

28.15i. Not covering the head

When you are in ihram, you should not cover your head nor should you shave it except in a case of necessity.

[It is forbidden for the one in ihram to cover his head and face with any covering, be it like mud, let alone a turban. As for other things which cover the body, it is forbidden to cover with with something specific which is stitched. The head is not shaved by the words of the Almighty, "But do not shave your heads until the sacrificial animal has reached the place of sacrifice. If any of you are ill or have a head injury, there is an expiationÉ" (2:196) which means: shaving to remove harm, and so the fidya is fasting, sadaqa, or practices: He indicates this:]

28.15j Its expiation

If you do you must make expiation by fasting three days or feeding six destitute people with two mudds each, using the mudd of the Prophet, may Allah bless him and grant him peace, or sacrificing a sheep. This sacrifice does not have to be carried out in any particular place.

[This could even be three days at Mina. He must perform an act of devotion. It could be a sheep or something else. He only mentioned sheep because fidya is done the best meat. It must be slaughtered. It is not enough to give it without sacrificing it, as some of them said. The lack of particular place is qualified to when the animal was not garlanded or marked. If it was garlanded or marked, then he only sacrifices it at Mina.]

28.15k What women wear

Women may wear khuffs and ordinary clothing while they are in ihram but in all other respects they must avoid the same things as men.

[They can absolutely wear leather socks, even if she has sandals. They wear stitched clothes in ihram. Outside of this, they avoid the same things: intercourse and foreplay, hunting, killing animals, removing hair. There is no way she can avoid covering her head.]

28.15l A woman's ihram

A woman's ihram consists in her not covering her face and hands

[She shows her face and hands, and it is forbidden for her to cover them with anything, even mud. She cannot wear a veil. If she does any of this, she must do fidya.]

28.15m A man's ihram

and man's ihram in his not covering his face and head.

[A man must show his face and head while in ihram, night and day. If he covers any of that and benefits, that is forbidden for him and he does fidya whether it is out of forgetfulness, knowingly or out of ignorance. If he removes it immediately, he owes nothing. He is permitted to use a pillow and shield himself from the sun or windwith his hand. The hand is not considered a covering unless it is touching the head and for a long time. In such case he must do fidya as it says the '*Utibiyya*. He is permitted to carry his baggage and other things on his head as necessary, like a bundle of firewood which he carries to sell. If he carries it for someone else or for trade, there is fidya. He is permitted to seek the shade of the buildings and tents.]

28.15n. Wearing leather socks

A man may not wear khuffs while he is in ihram unless he has not got any thronged sandals in which case he should cut his khuffs down to below the ankles.

[As is reported in the hadith. Then he proceedes to clarify which type of hajj is best:]

28.16 *IFRAD* IS BEST

According to us doing Hajj by itself is better than doing tamattu' ('umra then hajj separately in the same season) or qiran (hajj and 'umra together).

[Ifrad is best based on what is in the two *Sahih* collections that the Prophet did ifrad in the Farewell Hajj and that continued to be the action of the khalifs. Abu Bakr did ifrad in 2 AH, 'Umar in 10 AH and Uthman in 12. It has not been reported that the Prophet did qiran or tamattu'. The Imam said that some of the Companions commanded qiran and some tamattu'. Ifrad does not need to be mended by sacrifice as opposed to qiran and tamattu'. They need that.]

28.16a. Someone not from Makka not doing ifrad If someone who is not from Makka does qiran or tamattu'

[It is understood that the people of Makka do not have to sacrifice. What is meant by them are those who are present there or at Dhu Tuwa at the time the practices are performed. There are two conditions for the sacrifice of the one doing qiran: that he does not live in Makka or Dhu Tuwa and that he makes hajj in the same year. If he misses the hajj, he comes out of 'umra and owes no sacrifice. If he omits the first and does not come out of ihram for 'umra and remains in ihram, it is not cancelled for him. Then he clarifies the place of the sacrifice.]

28.16b The sacrifice to mend it at Mina he must sacrifice an animal at Mina,

[At Mina in the day after Fajr. It is not enough to do it as night. The basis in all that is that the Prophet did it. There are preconditions for the validity of the sacrifice:]

28.16c Preconditions for the validity of the sacrifice which he had with him at 'Arafa.

[1. Whoever is obliged to sacrifice must have the animals at 'Arafa at night. Ibn Harun said, "As for the precondition of standing at night, I do not know of any dispute about it because all who stipulate standing at 'Arafa at night, like Malik, make its judgement that of its owner in what makes the standing acceptable.
2. The sacrifice must be during the days of Mina: the Day of Sacrifice and the two days after it The fourth day is not included.
3. If the sacrifice is in the hajj, the sacrifice was driven under the ihram of the hajj, whether it was obliged by something lacking, or in the 'umra, or voluntary to repay hunting.
When all these preconditions exist, is it not permitted to sacrifice at Makka or anywhere else: the sacrifice at Mina is obligatory. If he lacks some of the preconditions, it is permitted for him.]

28.16d Sacrifice at Marwa

If he did not have it at 'Arafa he should sacrifice it in Makka at Marwa, having brought it there from outside the Haram.

[If he missed it in the days of Mina, even if he stood at 'Arafa, then he is obliged to sacrifice in Makka or the houses near it. He is not allowed to sacrifice at Dhu Tuwa and other places outside Makka, even if they are connected to the houses of Makka. That is only when he has brought the sacrifice from outside the Haram by any aspect because every sacrifice

must combine Haram and non-Haram. The sacrifice can be sheep, cattle or camels, but camels are best. Only sound animals are allowed in all like the sacrifices and sacrifice of these three is specificed for the one doing tamattu' and qiran when he can do so.]

28.16e. Fasting three days on the hajj

If you do not have a sacrificial animal you should fast three days during the hajj, that being between the time you go into ihram and the Day of 'Arafa.

[He only mentions the tamattu' and not the qiran. The three days during the hajj can be from the time of ihram to the day of 'Arafa. So if the imperfection which obliges sacrifice is before standing at 'Arafa, it is included in the time of fasting for three days, which is from ihram to 'Arafa because he can fast. He is like the one who exceeds the miqat and does tammatu' and qiran and omits the Tawaf of Arrival. We said, 'before the standing' is if the imperfection occurs after standing, like not stopping in Muzdalifa, or not stoning or shaving, or delaying the three until the days of tashriq are over. Then he fasts them with the seven days when he wishes.]

28.16f Fasting the days of Mina

If you do not manage to do that you fast the days of Mina. Then when you return to your own country you fast seven more days.

[If he misses the three days in the hajj, he fasts them at Mina without incurring any sin if he delays the fast until then for an excuse. After fasting the three, whether in the hajj or at Mina, he fasts the seven when he returns from Mina to Makka, whether he stays at Makka or not. If he delays it, he fasts whenever he wishes, and it is recommended that the three be consecutive, but it is not obligatory. The same applies to the ten. It is recommended in the well-known position.]

28.17 *TAMATTU'*

28.17a How it is done

To do tamattu', you go into ihram for 'umra only during the months of hajj, then come out of ihram, then go back into it again for hajj that same year without having travelled back to your country or to anywhere else a similar distance away.

[It is not a precondition that they are both in the months of hajj. If he goes into ihram in Ramadan and then completes it in Shawwal, he does tamattu' even if a pillar falls into the months of hajj. If only shaving remains for him and it happens in the months of hajj, he is not doing tamattu'. Then he performs hajj in this year because if they were not both in the same year, there is no tamattu'. He is also not doing tamattu' if he returns to his land after his 'umra in the months of hajj before going into ihram for hajj. So tamattu' is true in any form when he finishes 'umra in the months of hajj and goes into ihram for hajj before he returns to his land.]

28.17b Coming out of 'umra and going into ihram for hajj

If this is the case you are permitted to go back into ihram from Makka if that is where you are but to do you must go outside the haram territory.

[When he comes out of 'umra, he goes into ihram in Makka. In this case it is recommended that he do it from the door of the mosque. He does not go into ihram from Makka because one of the preconditions of 'umra is that he combine being in and out of ihram.]

28.18. *QIRAN*

To do qiran you gointo ihram for hajj and 'umra together, making the intention to do 'umra first. If you decide to do Hajj as well as 'umra before you have done the tawaf and its following two rak'as you are considered as doing qiran.

[He begins with 'umra. It appears from his words that he does not make it consecutive in tawaf. The well-known position is that it is permitted. It is valid after he completes it and before praying the rak'ats, but it is disliked. If he prays the rak'ats, he misses consecutiveness. Whoever does it consecutively (*arfada*) after sa'y is not doing qiran by agreement.]

28.19 PARTICULARS ON *TAMATTU'* AND *QIRAN*

28.19a People of Makka doing tamattu' or qiran

The people of Makka do not have to sacrifice if they are doing tamattu' or qiran.

[It is agreed that they do not have to sacrifice in tamattu' or qiran according to the well-known position.]

28.19b When it is not tamattu'

If you come out of ihram after an 'umra before the months of hajj and then stay on for hajj during the same year, you are not considered as doing tamattu'

[If he delays the shaving until the months of hajj.]

28.20 ATONEMENT FOR HUNTING IN *IHRAM*

20.20a Expiation

If you kill any game while in ihram you have to make expiation for it by sacrificing a domestic animal equivalent to the one you killed.

[Whether its flesh is eaten or not. The Lawgiver said whether the killer in ihram is doing hajj or 'umra, or is in the Haram, even if he is not a muhrim, whether he is free or slave, male or female, young or old, and the killing is deliberate or accidental, or by forgetfulness direct or causal. This sacrifice is an obligation. The likeness is in form and value, or close to it. So the one who kills an elephant owes a Khorasani camel with two humps. The one who kills a wild ox or wild ass or gazelle owes a domestic cow. The one who kills an ostrich owes a camel becase it is close in value and form. The one who kills a hyena, fox, or one of the doves of Makka outside the Haram must pay its price in food when it is killed. The least of what is allowed in repayment for hunting is a lamb or kid because Allah Almighty called it a sacrifice and so it must meet the preconditions of a sacrifice.]

20.20b. Who assesses it

This should be ascertained by two trustworthy fuqaha' from among the Muslims.

[If he pays it before their judgement on it, he repeats it, even if the evaluated thing is not eaten. The precondition of being trustworthy is being free and adult. There must be the expression "judgment": fatwa is not enough. One of the preconditions of their judgement is that base their judgement on the judgement of the Prophet and the Companions. A judgement which has no prior judgement is rejected and not carried out; and no one repays without a judgement. If he repays it without a judgement, he repeats it, even if it agrees with the judgement passed. An

exception to are the doves of Makka and the Haram for which there is a sheep.]

20.20c. Where the sacrifice is done

If the animals to be killed was with you on 'Arafa the sacrifice should be made at Mina. Otherwise it should be made in Makka, the animal concerned having been brought in from outside the Haram territory.

[The place where it is slaughtered, i.e.the repayment of game if it is part of what is slaughtered and sacrificed. He or his representative do it at Mina. Otherwise it is done in Makka.]

20.20d. The choice

You have the choice of doing this or of making kaffara by feeding destitute people, in which case you work out the value of the animal killed in terms of food and give that amount away as sadaqa. Or alternatively you can fast one day for each mudd, fasting a whole day for any incomplete mudd.

[Someone who kills game has a choice between two things. He can do kaffara, which is feeding from the predominant food of the place where the game was killed, whatever it is. If it has no value there, one considers its price in the nearest place to it, and he gives it as sadaqa to them. When he feeds, each poor person receives a mudd. If he gives its price or goods, that is not enough.

The second possibility is to fast. There is a day per mudd because he cannot make it partial, and so it can only be mended by a complete day.]

20.21 GOING HOME

20.21a. The ruling of 'umra

'Umra is a confirmed sunna to be done at least once in a lifetime.

[It as two miqats: place, which are those of the hajj, and time, which is the entire year. It has three pillars: ihram, tawaf and sa'y. Shaving is not one of its pillars. The description of ihram for it is recommended to have a ghusl and what is permitted to dress and what is forbidden of scent, etc, is like the hajj, It is disliked to repeat it in the same year in the well-known position.]

20.21b. Final du'a

When you leave Makka after hajj or 'umra, it is recommended to say: "Ayibuna, ta-ibuna, 'abidana lirabbina, hamiduna, sadaqa'llahu wa'dahu wa nasara 'abdahu wa hazama'l-Ahzaba wahdah. (Returning, repentant, worshipping, praising our Lord. Allah had been true to His promise and given victory to His slave and defeated the clans by Himself.)

CHAPTER 29: ON SACRIFICES, THE SLAUGHTER OF ANIMALS, 'AQIQA (ANIMALS SACRIFICED FOR THE BIRTH OF A CHILD), HUNTING, CIRCUMCISION AND FORBIDDEN FOOD AND DRINKS

29.1 ANIMALS FOR FEAST DAY AND HAJJ SACRIFICES

29.1a The ruling of the 'id sacrifice

Sacrificing an animal for the 'id is a sunna which is obligatory for all who are able to do so.

[*Adhiya* refers to animals which are brought to be sacrificed on the Day of al-Adha and afterwards. It is called that because of the day when they are sacrificed at Duha and it is called the 'Id al-Adha because the prayer in it is at that time. It is a confirmed sunna in the well-known position for the one who is able, if he is free, Muslim, adult or child, male or female, resident or travelling, not on hajj, because because the sunna is for him to sacrifice for himself and those relatives whose maintenance he is resposnible for, like parents and poor children. By "being able" he avoids the one who is poor. Ibn al-Hajib said that the one who is able is the one who would be injured in his property, i.e. the one who is not able to find its price in that year. Partnership is permitted in the reward for it rather than in its price.]

29.1b. The minimum

The least which is acceptable for it in the case of sheep is a jadhaÔ, which is a one year old ram, although some have said eight months and some ten months old. In the case of goats it should be a

thaniyya, which means a male in its second year and likewise only thaniyya animals are acceptable in the case of cattle and camels. A thaniyya in respect to cattle is a male in its fourth year and in respect to camels it is a six year old male.

[This is the well-known position.]

29.1c. The the most perfect animal

Rams which have not been castrated are better for sacrifice than those which have been, but castrated rams are better than ewes. Ewes are better than either male or female goats. Male goats which have not been castrated are better than camels and cattle for Ôid sacrifices.

[This has to do with being more perfect. So there are twelve grades, the highest is a uncastrated ram and the least is a female camel and cow.]

29.1d The order in animals

As regards 'hadys' (animals to be sacrificed as part of the hajj) camels are best and then cattle and then sheep and then goats.

[This is the famous position because what is desired of hadys is to have a lot of meat for the poor, and what is desired of the dahiya is good meat, i.e. for bringing to the family, Bahram said, "The evidence for us in the two places is that the Prophet used to often make his hadys camels and his dahiya was two rams, as is reported in the *Sahih*.]

29.1e. Unacceptable animals

In none of these circumstances is it acceptable to sacrifice a one-eyed animal or a sick animal or a markedly lame animal or an emaciated animal.

[However, an animal with some whiteness in the eye which does not entail blindness is permitted. Of course, a totally blind animal is not permitted. A clearly ill animal is not allowed, but one with a slight illness is permitted. Clear illness involves not eating normally or eating a lot. Also excluded are animals having a lot mange and which have lost its teeth, except for a single tooth.]

29.1f. Other unacceptable animals

In fact you should avoid using for sacrifice any animal which has something wrong with it. You should also avoid any split-eared animal unless the split is only slight. The same applies to an animal whose ear has been cut off or one with a broken horn. If it is bleeding it is not acceptable for sacrifice. However, if it is not bleeding, it is acceptable.

[This is if it is a lot, a little is overlooked. He includes split-eared animals, and other forms of mangling the ears. There is disagreement about the extent of cutting, That which is the predominant position is that a third of the ear is slight, and a third of the tail is a lot because the tail is meat and sinew while the ear is not. This is about the tail of the sheep which is a fat tail. As for like the ox, camel and sheep in some lands which have no meat on the tail, that which would prevent its acceptability is what decrease beauty. Bleeding refers to a wound which does not heal.]

29.2. TIME OF SACRIFICE

29.2a. After the Imam

It is good to sacrifice your animal yourself after the imam has made his sacrifice on the morning of the Day of Sacrifice. If you slaughter your animal before the imam you must repeat your sacrifice.

[That is recommended if it is possible to imitate the Messenger of Allah. If you cannot do that for some reason, then you delegates Muslim, and it is recommended that he be one of the people of virtue and excellence. Anyone who does not pray is disliked, but it is said that it is permitted in the well-known position. It is not allowed to delegate an unbeliever of any description.

The time of sacrifice begins from the time the Imam sacrifices on the Day of Sacrifice, the 10th of Dhu'l-Hijja. He should sacrifice in the morning, which is the time of the nafila. If anyone sacrifices before the Day of Sacrifice or after Fajr on the Day of Sacrifice and before sunrise, that is not permitted and he must repeat the sacrifice. This is based on the words of the Almighty, "Do not advance yourselves in front of Allah and of His Messenger." (49:1) Al-Hasan al-Basri said, "It was sent down about people who sacrificed before the Imam." This is about the one who has an Imam.]

29.2b When there is no imam

If there is no imam with you, you should make sure you do not do it before the time the imam nearest to you would do so. The sacrifice must not be done at night.

[They sacrifice at the proper time. If their error becomes evident to them, it is allowed in the well-known position. One considers the Imam of the prayer. It is not done at night on the second or third day. This is because Allah Almighty says, "Mention Allah's Name on particular days." (22:28) It is allowed to sacrifice in forenoon in the second or third

day after dawn and before sunrise, but then he has abandoned what is recommended as opposed to the one who sacrifices in the first day after dawn and before sunrise which is not acceptable.]

29.2c. The three days of sacrifice

There are three 'days of sacrifice' and you can make your sacrifice any time up until Maghrib on the last of these days but the best time to make your sacrifice is on the first day.

[According to Malik, following a group of the Companions. It is the Day of Sacrifice and the two days after it. The end of the time is sunset on the third day. The best time follows what was done by the Prophet and the right-guided khalifs.]

29.2d. On the second day

If you do not manage to make your sacrifice before midday on the first day some of the people of knowledge say that it is better to wait until the morning of the second day.

[This is Ibn Habib. Bahram transmitted it from Malik. Bahram said that they is no disagreement that what is done before midday from the beginning of the day is better than what is after it. There is disagreement about whether what is after midday of it is better than before midday of the second day. That is the apparent meaning of what the *Mukhtasar* says. It is the school of the *Risala*. The reliable position is that all of the first day is better than what is after it.]

29.2e. None of the animal can be sold

No part of an animal sacrificed for the 'id may be sold; neither its skin nor anything else.

[This is a prohibition. This also applies to an 'aqiqa. He refutes the one who says that its skin can be sold.]

29.3 RITUAL OF SACRIFICE

29.3a Facing qibla

The animal you are intending to sacrifice should be made to face the qibla

[This is in all sacrifices. If it is not done for some excuse or forgetfulness, it is agreed that it can be eaten.]

29.3b What is said

and when you slaughter it you should say, "Bismillahi, Allahu Akbar." (In the name of Allah. Allah is greater.)

[He says both. That is the action of the people. The takbir is sunna, i.e. recommended. The basmala is taken from his words afterwards, and it is the position in the *Mudawwana*. It is obligatory when remembered and one is able to say it. It is omitted in case of lack of ability and forgetfulness. If he confines himself to it, that is sufficient by the words of Allah, "Eat from that over which the name of Allah has been mentioned." (6:118) Nothing is a precondition but the name of Allah Almighty.]

29.3c What is said on 'id sacrifices

If, when sacrificing for the 'id you add "Rabbana taqabbal minnâa(Our Lord, accept this from us), there is no harm in that.

[This means it is recommended. It is also said that it is permission.]

29.3d If the basmala is forgotten

If you forget to say '*Bismillah*' when sacrificing an animal for the 'id or at any other time you are permitted to eat it. However, if the Bismillah is left out deliberately the animal cannot be eaten.

[According to the position of the *Mudawwana*, it is obligatory when remembered.]

29.3e When hunting

The same thing applies to sending hunting animals out after game.

[Or shooting an arrow and the like used for hunting. It is eaten. If the basmala is deliberately omitted, it is not eaten by the words of Allah, "Do not eat from that over which the name of Allah has not been mentioned." (6:121) The Almighty said, "Eat from what they bring you and mention the name of Allah over it." (5:4)]

29.4 Use of Animals for Various Types of Sacrifice

29.4a Not sold, but eaten from and given away

It is not permissible to sell the meat, skin, fat, innards, or any other part of an animal that has been sacrificed either for the 'id or for a new-born child or as part of the Hajj, but you are allowed to eat from such an animal and it is recommended to give some away as sadaqa although it is not obligatory to do this.

[This includes horn, wool and hair. It is possible that the excellence is specific or that it refers to combining eating and sadaqa, which is the literal meaning by the words of the Almighty, "Eat from them and feed those who are poor and in need." (22:28) and His words, "feed both those who ask and those who are too shy to ask" (22:32) whether he asks

or not. Giving it all as sadaqa is disliked. There is no definition to how much is eaten or given away. Most forbid feeding the unbeliever from it absolutely, whether a Kitabi or Magian.]

29.4b. Not eating from an animal slaughtered for expiation.

You may not, however, eat from an animal you have sacrificed in expiation for breaking one of conditions of ihram nor for one sacrificed on account of having killed while in ihram nor from one sacrificed as part of a vow you have made to feed the poor nor from 'hadys' intended as voluntary sacrifices which for some reason become defective before reaching the place of sacrifice. In any other instances you can eat from your sacrifice if you want.

[The hadis are not eaten as opposed to the dhahiya.

The place of sacrifice is Mina if he had the animal at 'Arafa and it is is within the days of sacrifice, and at Makka if he did not stop there or if the days of sacrifice have passed. It is haram to eat from the these categories after they reach their place because Allah Almighty called the fidya and repayment kaffara, and a man does not eat from his kaffara. He excludes himself in the third case and gives it to the poor. He is permitted to eat it before the place because he can still replace it. He is permitted to eat from voluntary hadis when they are defective after reaching the place. He is permitted to eat the hadis of qiran and tamattu' and the hadi of invalidation, and every hadi obliged for missing one of the marks of hajj absolutely before reaching the place and after it by the lack of suspicion before it reaches the place because he can replace it, and after it the business is clear.]

29.5 SLAUGHTERING

29.5a. Severing the throat and carotid arteries

The correct method of slaughtering is to sever the throat and the carotid arteries and nothing short of that is acceptable.

[All of the throat. The throat and arteries must all be cut: this is the position of Sahnun and is well-known. It is said that it is enough to cut the arteries completely and half the throat. The literal words of the shaykh mean that it is not a precondition to cut the gullet. 'Iyad said that the gullet is the path of food and drink.]

29.5b A single stroke

If you take your hand away after severing only part of that and then resume and compete the cutting, the animal cannot be eaten.

[It is apparent that it is whether it is a long or short gap, but there is disagreement about when he returns the blade quickly. Sahnun said it is unlawful. Ibn Habib said that it is eaten because all that is asked is that it be immediate and a small disparity is over looked. That is the reliable position. The fiqh of the question is that if he lifts his hand after killing it and returns afterwards, it is not eaten, even if he lifted his hand by necessity. If he lifts his hand before finishing any of the killing, it is eaten, even if he returns afterwards because the second is a separate slaughter.]

29.5c Cutting off the head

If you cut the head right off you have committed a wrong action, but the animal can be eaten.

[Whether it is deliberate, by forgetfulness or an overly sharp knife.]

29.5d. When the animal is slaughtered from the back of the neck

You cannot eat an animal which has been slaughtered from the back of the neck.

[It has not be slaughtered in the prescribed manner and its death arose out by cutting the spine. If it is killed by such slaughtering, it is not eaten, even if the throat is cut and the knife is hard on the arteries because of the lack of sharpness in the knife and it cuts the arteries from inside. It is not eaten according to the Maliki School.]

29.5e Methods of slaughter

Cattle should be slaughtered with a knife but if their throats are pierced with a spear they can still be eaten.

[Two forms are permitted in cattle because they have the place of sacrifice and the place of slaughter. The place of sacrifice is the the upper breast. It is not a precondition in *nahr* slaughter that any of the throat and arteries be cut because the place of the upper breast is the place where the implement reaches the heart and the animal dies quickly.]

29.5f Camels

Camels should be pierced in the throat with a spear and if they are slaughtered with a knife they may not be eaten although there is a difference of opinion about this.

[It is recommended that camels be slaughtered while they are standing. There is disagreement about eating them if they are slaughtered with a knife. The position that they are not eaten if they are slaughtered like this is found in the *Mudawwana*. Ibn Habib takes it as a prohibition and Ibn al-Hajib thinks it is well-known. It is what is preferred. Others consider it disliked. The dispute is about when such a slaughter is

unnecessary. If it is necessary, as when a camel falls into a hole and its upper chest cannot be reached and it is slaughtered, then it can be eaten by agreement.]

29.5g Sheep and goats

Sheep and goats should be slaughtered with a knife and if their throats are pierced with a spear they should not be eaten although there is a difference of opinion about this also.

[This is when it is not due to necessity. The well-known position is that it is forbidden. If it is due to necessity, as when it falls into a hole and slaughtered, there is agreement that it is eaten.]

29.5h The foetus

The slaughter of a mother includes what is in the womb provided that the foetus is fully formed and its hair has grown.

[This is part of livestock. If it is slaughtered and there is dead foetus in it, it can be eaten with preconditions. It should be fully developed. This does not mean that all its limbs are perfect. It can be even if missing a leg.]

29.6 Forbidden Foods and Animal By-products

29.6a Various forms of death

An animal which has been strangled by a rope or suchlike or one that has been beaten with a stick or some other object or one that has fallen from a height or one that has been gored or one that has been attacked by a wild beast may not be slaughtered and eaten if the animal is going to die from the wounds it has received.

["Suchlike" includes the spear and the stone. This is because such animals are carrion. If it is hoped that the animal will live, there is no dispute about sacrificing it. If there is no hope of life, Malik said via Ashhab that it is not sacrificed and not eaten. It is the position of the shaykh. The school of Ibn al-Qasim, which is transmitted from Malik, is that it is sacrificed and eaten. It is the preferred position.]

29.6b Carrion in dire need

There is no harm in eating carrion (mayta) if you are in dire need -

[From any living thing except human. If someone in ihram finds both game and carrion, he eats the carrion. If he finds carrion and pig, he eats the carrion. If he only finds pig, he eats it. It is recommended to him to slaughter it and its slaughter is by wounding. At-Tata'i said, "The evident position is that he does not need to slaughter it because slaughter does not benefit that which forbidden to eat.]

29.6c. How long carrion can be eaten

you can eat from it until you are satisfied and take provision from it so long as you throw it away when the need for it no longer exists.

[This is is when he fear lack of food in the future. It is permissible for the person compelled to eat carrion when he does not find any other food. If he is forced to take food belonging to other people, it is said that he confines himself to what is necessary for life without filling himself and taking provision, as al-Mawwaq stated. It is said that he eats his fill and does not take provision, as al-Huttab said. As he is permitted to eat carrion in necessity, he is also allowed to drink all that will repel thirst, like impure water and other impure liquids, like impure rose water except for wine. It s not lawful except to take a swallow. It is of no use in quenching thirst. Indeed, it increases thirst.]

29.6d. Skins of carrion

There is no harm in using the skin of a carrion animal if it has been tanned but you cannot pray on it nor can it be sold.

[By tanning its smell and moisture is removed. It is understood that it is a precondition that it is not used before it is tanned. It appears from his words that the tanning is used for the skins of all carrion as Sahnun and Ibn 'Abdu'l-Hakam said. It is well-known that tanning is not used for pigskin. It is also apparent from his words that its purity is general to aquatic and other animals, and that it is the case with Sahnun and others. The well-known position is that its purity is confined to dry animals. Water alone is what clarifies aquatic animals . However the prayer is not performed on that in the well-known position. It is not sold according to one of two transmissions which is well-known in the School.]

29.6e. Skins of wild animals

There is no harm in doing the prayer on skins of wild animals or selling them if they have been killed correctly.

[This means it is permissible. This refers to every animal whose flesh is disliked and so it includes elephants, wolves, foxes, and hyenas provided that they are slaughtered. They can also be sold.]

29.6f. Wool and hair of carrion

You can use wool of a carrion animal or its hair or any other thing which could be taken from the animal when alive, but according to us it is better for it to be washed first.

[After shearing and it refers for general use in selling, praying on it, giving it as sadaqa and other things. If it is sold, the fact that it is from carrion should be made clear. It is clear that his words, "and its hair"

includes the bristles of pigs. That is the case according to Malik, Ibn al-Qasim and others. It is said that the hair of pigs and dogs are excluded and others say that all of pigs are impure except the hair. The Malikis recommend that wool and other things be washed if you are not certain that they are pure. If you are certain that something is pure, it is not recommended to wash it. If you are certain it is impure, it is obligatory to wash it.]

29.6g Feathers, horns, teeth, hooves, tusks

You cannot use feathers from birds which are carrion or the horns, hooves and teeth of carrion animals. It is disliked to use elephant tusks although there is a difference of opinion about this.

[This would appear to contradict his words "or what is taken from them when alive." He removes the specification by his words, "or pain them." It is clear that it is prohibition because life makes it allowed.

The dislike of the use of elephant tusks is found in the *Mudawwana*. But there is disagreement about it as about horn and antlers. There are four positions, and the well-known of them is that all of it is impure based. Ibn Wahb said that it is pure. What is confirmed is that elephant tusks are impure since it is carrion. The position of the *Mudawwana* is to dislike oils found in the tusks of elephants, combing with it, and trading in it because it is carrion. As for the tusks of elephants slaughtered, even as a camel, that is disliked, and the dislike is for encourage restraint.]

29.6h Liquids in which a mouse dies

Any ghee, oil or liquid honey in which a mouse has died should be thrown away and not eaten although there is no harm in using such oil for lighting purposes provided it is not in a mosque, in which case it should be carefully avoided.

[It is not sold. Similar to a mouse is any breathing creature. Liquids are thrown away and not eaten However it can be used for light in places like houses and shops. It is not used in mosques because it is impure and the mosque lamps are not lit by it since they are free from impurities.]

29.6i. If the substance is solid

If the substance is solid, then the mouse should be thrown away along with what is around it and the rest may be eaten, although Sahnun said this was the case only if it had not stayed in it a long time, otherwise all of it should be thrown away.

[He can sell it although he must make that clear. There is no set amount which is thrown away. That is according to predominant opinion. If it is in it a long time, then the impurity may have spread throughout it.]

29.6j Food of the People of the Book

There is no harm in the food of the people of the Book and their slaughtered animals.

[He means it is permissible. Allah Almighty says, "And the food of those given the Book is lawful to you." Most commentators say that what is meant is all slaughtered food is lawful, what is lawful of that and what is unlawful, like when the slaughtered animal has a bad lung. There must be permission to eat if the Kitabi is one of those who does not consider carrion lawful. If he considers it lawful, al-Bakri said that if is slaughtered in your presence and then it is permitted to eat it. If he is absent from it, it is not permitted.]

29.6k Fat of animals slaughtered by Jews

However, it is disliked to eat the fat from animals slaughtered by jews although it is not actually haram.

[i..e what is forbidden them by their Shari'a, like the fat of cows and sheep like the fine fat which covers the intestines. If it is said that the fat which are the Jews are foridden by our Shari'a is not unlawful, the answer is that it is a slaughtered part and what is slaughtered is lawful for him and he did not slaughter for other than what is lawful for him. Because it is prohibited for him it is disliked for us to eat it.]

29.6l. Animals slaughtered by Magians

It is not permissible to eat animals slaughtered by Magians although any of their food that does not involve slaughtering is not haram.

[This refers to idolator in general, whether an idolater slaughters for himself or for a Muslim unless he commands him to sacrifice and tells him, "Say, 'In the name of Allah' over it'. That can be eaten without disagreement.

Similarly one does not eat the sacrifice of the drunk or mad person, even if they carry out the slaughter, because of the absence of their intellect. Ibn al-Hajib said, "It is valid when done by the discriminating child, and the woman without necessity in the soundest position." It is permitted to eat unslaughtered food by agreement if he is certain of its purity. If he is certain of its impurity, it is unlawful to eat it. If he doubts it, he considers it impure.]

29.7 HUNTING

29.7a Hunting for sport is disliked

Hunting for mere pleasure is disliked but any other kind of hunting is permissible.

[Hunting is obligatory if he can only provide for his family by it.]

29.7b. Prey killed by a trained dog or falcon

Any prey killed by your trained dog or falcon can be eaten if you sent it after it.

[It is not particular these two, but applies to all animals which can be trained to hunt and obey. It is not a precondition that falcons be restrained unless the prey is a bird. It is enough that it obey when released. It is not a precondition that it accept confinement after being released. It is a precondition for hunting animal that he actually train it, even if it is an animal which does not normally accept training, like a lion or tiger. It is a precondition that the prey be seen or in a confined space like a cave or thicket which he knows about or which has no other exit. Otherwise it is not eaten. It must be something whose flesh is eaten, even if it different than he thinks as when he thinks it is a rabbit and releases his dog and it is a gazelle. It is a precondition that the hunter make an intention and say the *tasmiya* when releasing the animal. If he neglects it intentionally, the game is not eaten but not if he forgot and he is Muslim. This is for land hunting. As for fishing, it is permitted for everyone who is sane. It is not valid from a mad person or drunk.]

29.7c Prey killed out of sight

The same applies if your hunting animal kills any prey out of sight before you are able to slaughter it. If you reached the prey before it has been killed it can only be eaten if you slaughter it.

[It must be slaughtered. If he does not neglect it, it is eaten, even if he does not carry out its killing since there must be bloodletting, even on the ear when the skin is thick.]

29.7d. Killing game with a spear or arrow

You can eat anything you kill with a spear or arrow but if you get the chance to slaughter it you should do so.

[All that has a point, even if not iron, whether it is killed outright or dies of its wound. You can eat it because of your intention and basmala when you shot. It is desirable to slaughter it if you find it still alive.]

29.7e Game that runs off

You can still eat an animal even if it runs off, provided you are sure that it is your arrow that has killed it as long as you reach it before nightfall. Some say that this refers only to prey that has been killed by trained hunting animals. If your arrow is found piercing a vital organ you can eat the animal.

[It says in the *Mudawwana* that if he the night passes and he finds it dead, he does not eat it, whether that is through a dog, falcon or arrow.]

29.7f Domestic animals killed like game

You cannot eat a domestic animal which has been killed in the way game is killed.

[This is clear, even if it is a stray and has joined wild animals. It is the same if the wild animal becomes tame. It is only eaten by sacrifice.]

29.8 THE 'AQIQA

29.8a The 'aqiqa is recommended

Sacrificing an animal for the birth of a child ('aqiqa) is a recommended sunna. It should be done on the seventh day after the birth of the child, using a sheep similar in age and characteristics to what has been previously mentioned concering sacrifices for the 'id.

The day on which the child is born is not counted as one of the seven days. The animal should be sacrificed in the morning.

[The word derives from the hair of the head of child because it is slaughtered when the hair is cut. It is also said that it is because its veins are cut. It is recommended, not stressed. The basis for its legality is what Ahmad related with an excellent isnad: the Prophet said, "Every child is in pawn for his 'aqiqa." It is done for a boy or a girl provided the child lives to the seventh day. It should be a sheep or a goat without any defects which would prevent its sacrifice. The day he is born is not counted, unless he is born at Fajr, in which case it is counted. It should be done in the morning and it is disliked to do it from midday to sunset, and it is not allowed to be done at night or before sunrise.]

29.8b The child is not smeared with blood

The child should not be smeared with any of the animal's blood.

[To avoid the custom of the Jahiliyya which was to rub the head with the blood for luck so that he might be courageous and blood-shedding.]

29.8c. What is done with the meat

It can be eaten and given away as sadaqa and its bones can be broken.

[i.e. it is recommended for the people of his house and neighbours to eat from it. Al-Fakhani said, "Feeding people is the same as is done in sacrifices and there is no specific amount which is given to people. He eats what he wishes and gives as sadaqa what he wishes, although sadaqa is more fitting since it is said that there there is no 'aqiqa until all or some of it is given as sadaqa." The aim of the 'aqiqa is sadaqa and sadaqa can be raw or cooked. It is recommended to break its bones as

opposed to the Jahiliyya when they did not break its bones out of fear that it would affect the child.]

29.8d. Shaving the baby's head

If the baby's head is shaved and the weight of hair in gold or silver given away as sadaqa that is a good practice.

[Male or female. This is based on a hadith of 'Ali in at-Tirmidhi where the Messenger of Allah did an 'aqiqa for al-Hasan with a ram and said, "Fatima, shave his head and give sadaqa in silver according to the weight of the hair." It was weighed and it was a dirham or part of one. The fact that it is "good" means that it is recommended. It is recommended that it he be named on the seventh day if there is an 'aqiqa, and if there is no 'aqiqa, the child is named before that. It is recommended that something sweet go first to the stomach of the child because the Prophet did that for 'Abdullah ibn Abi Talha using a date.]

29.8e. Rubbing the head with other than blood

If, instead of being rubbed with blood as was the custom before Islam, the baby's head is rubbed with a lotion consisting of perfume mixed with rose water, there is no harm in this.

[Based on what is related by Abu Dawud from Burayda the Companion. He said, "In the Jahiliyya when one of us had a son, he would sacrifice a sheep and rub the head with its blood. When Allah brought Islam, we used to sacrifice a sheep and shave his head and rub it with saffron."]

29.9 CIRCUMCISION

29.9a Male circumcision

Circumcision is a confirmed sunna for males

[It is mandatory. It is disliked to be circumcised on the day of birth or the seventh day because it is the practice of the Jews. Circumcision should be performed before the time when he is commanded to pray – from seven years to ten. There is disagreement about whether or not to circumcise an adult who becomes Muslim and fears for himself. Sahnun said that circumcision is obliged for him, saying, "If it is mandatory to cut off the hands of thieves, is it left for fear of himself?" Someone who foregoes circumsicion without excuse is not allowed to be Imam or to give testimony.]

29.9b Female circumcision

and female circumcision (khifad) is praiseworthy (makruma).

[To remove what the woman has of excess. It is recommended according to at-Tata'i. It is worthy because it brightens the complexion and makes intercourse pleasurable.]

CHAPTER 30: ON JIHAD

30.1 ITS MEANING

[Linguistically jihad is derived from *jahd*, which, acording to *al-Misbah*, is effort in what someone does, or *juhd* which is ability. It is a technical term for the Muslim fighting the unbelievers who have no treaty with the intention of elevating the word of Allah or presenting Islam.

Jihad has obligations which must be met. They are:

1. Obeying the ruler and so when he recommends going in a particular direction to fight, it is binding to go there.
2. *Ghulul* (misappropriation) must be abandoned: it means to take from the booty before it is divided.
3. He must be honour to a safe-conduct, and so when an unbeliever is granted safe-conduct, he must abide by it and he is not permitted after that to deem it lawful to kill him.
4. One must not flee when the odds are two to one: which means standing firm in the fray.

Jihad has two categories; individual obligation and general obligation. When it becomes a specific duty to do it and it cannot be opposed, whether it the person is one of those who are responsible for the obligation of jihad or not, like the slave and child who cannot fight and women, as when the enemy arrives suddenly in the place and only these people are available, then it is an individual obligation for them.]

30.2. HOW AND WHEN IT IS OBLIGATORY

30.2a. An obligation

Jihad is an obligation which can be taken on by some of the people on behalf of others.

[By the words of the Almighty: "Those believers who stay behind – other than those forced by necessity – are not the same as those who do jihad in the way of Allah." (4:95) Allah has promised both good, ie. the best reward which is the Garden. There is mutawatir sunna that the Prophet sent some people rather than others.]

30.2b. Inviting people to Islam first

And it is preferable, according to us, that the enemy are not fought until they have been invited to the *din* of Allah except if they attack first.

[The Malikis prefer that each group be called upon to abandon their disbelief and be called to the shahada whose contents are not prescribed. He calls to the general message of the Prophet for three days in succession unless they attack first. Then the call is not recommended. Indeed, it becomes obligatory to fight them.]

30.2c. Offering a choice between Islam and jizya

They can either accept Islam or pay the jizya (tax on non-Muslims); if not they are to be fought.

[His apparent words mean that they are given a choice between the two at the same time. If they accept one, they are left. Otherwise they are fought. *Al-Jawhar* describes the call as Islam being offered to them. If they answer, they are left. If they refuse, then jizya is offered to them, If

they refuse, they are fought. All of that is when there is a delay and there is time. If they attack before the call, preventing our call, they are fought because then the call is unlawful.]

30.2d Where jizya is acceptable

Jizya is only acceptable in places where they are subject to our law. If they are a long way from our jurisdiction jizya can only be accepted from them if they move to our territory. If they do not do this they are to be fought.

[Ibn 'Umar said that this precondition is about the people of force. As for the people of truce, it is not a precondition for them. Jizya is accepted from them where they are because they restrained themselves until they paid peace for themselves and their lands.]

30.2e. Fleeing from the enemy not allowed

Fleeing from the enemy is a major wrong action when their number is twice that of the muslims or less.

[This is when the unbelievers are twice that of the Muslims in strength or stronger, or the business is not known. It is the well-known position when they are considered weak according to the number, not the force, as opposed to Ibn al-Majishun. He says that they must be established as more than twice the number if they are superior to the unbelievers in weapons and stronger in strength and resolve. The prohibition against flight is when he flees and does not intend to return. If he does that as a trick or to join another group so that the enemy sees the retreat and follows him and he returns or he rejoins the amir or the group of the Muslims to help them, then it is not unlawful.]

30.2f When flight is allowed

If there are more than that there is no wrong in doing so.

[If there are more than twice the number of Muslims, there is no harm in flight. Such it would appear, even if the Muslims number as many as 12,000, which is in *an-Nawadir* from Sahnun. Ibn Rushd related from group of the people of knowledge and he is thinks that when the Muslims reach 12,000, they are not permitted to flee, even if the unbelievers are more than twice their number.]

30.2g. Fighting under any commander

The enemy are to be fought whether the commander of the muslims is right-acting or not.

[It is obligatory for those for whom jihad is obligatory to fight the enemy. The Prophet said, "Allah will support his deen by the impious man." Perhaps if he does not fight with him, there might be harm for the Muslims.]

30.2h Killing prisoners

There is no harm in killing an enemy prisoner but you may not kill anyone after a pledge of security has been given, nor may you break a treaty.

[When there is benefit in killing him. After security is given by the Imam or someone else in the well-known position, contrary to the one who says that security given by other than the Imam is dependent on the view of the Imam. The basis of the well-known position is the words of the Prophet about a banner being set up for the treacherous on the Day of Rising, when it will be said, "This is the betrayal of so-and-so." It means

that he will be known as treacherous on the Day of Rising so that the people there will censure him. Nor is a treaty to be broken.]

30.2i Not killing women and children

Nor may you kill women and children.

[Since that prohibition is sound from the Prophet. Similarly jizya is not imposed on them. The Imam can give them choice between three: enslavement, freedom and ransom.]

30.2j Monks and priests and women who fight

Killing monks and priests should be avoided unless they are involved in the fighting. Similarly, women who fight can also be killed.

[The prohibition against killing monks is not by virtue of their monasticism, because they are further from Allah because of the strength of their disbelief. They are left since the people of their deen leave them and so they are like women. Priests (rabbis) are left unless they actually fight. It is said that this refers to women and children as well. Women can be killed if they are involved in the actual fighting. Ibn 'Umar limits this to the state of fighting. When fighting is over, women are not killed. The predominant opinion is that when women fight with weapons, they can be killed during the fighting or afterwards, even if they did not fight anyone. According to the *Mukhtasar*, monks and nuns retain their freedom, and it is forbidden either to kill them or to reduce them to slavery.]

30.2k pledge of security

A pledge of security given by the least of the Muslims is binding on the rest of then.

[This security is granted to specific people, i.e. specific unbelievers. The people of a region or town are not granted security except by the ruler. If someone else makes such a contract, the ruler can break it if he wishes. We read in *al-Jawahir*, "The precondition of the security is that there is no harm in it for the Muslims. If someone grants security to a spy or scout or one who contains harm, it is not binding."

30.2l Women and children giving security

This also applies when women do this, and also children provided they are able to understand what is involved. It is also said that this is only acceptable if the man in charge says it is acceptable.

[i.e. if the child knows that it is unlawful to violate security, then he is obliged to observe it.]

30.3. Booty

30.3a. The fifth

When the Muslims gain booty by having fought and won it, their leader takes one fifth and divides the remaining four-fifths between those doing the fighting. It is better for this dividing up to take place where the battle was fought.

[He divides the fifth as he thinks best. He can put it in the treasury or spend it on the welfare ot the Muslims by buying weapons or other things beneficial for the Muslims. If he likes, he can give it to the family of the Prophet or others or give part of it to them and the rest to others. This is when they take booty other than land: horses, linen, slaves, money and grain. Land is not divided in fifths or allotted. It is entailed and its land-tax is spent on the best interests of the Muslims. After the fifth is taken, the rest of the booty is divided in that place whre the

fighting took place since the Prophet did that because it is a punishment for the enemy.]

30.3b Which booty is divided

Only booty that has been fought for using horses and camels or taken after combat is to be divided up in this way.

[As for what is taken without combat or force, like that which is take from the one who people have left when they hear that the Muslim army has advanced against them, there is no fifth nor division. It is at the discretion of the Imam as he can dispose of the fifth of the booty wherever he wishes.]

30.3c Use of food or fodder

If part of the spoils consist of food or fodder, there is no harm in any who need it taking some before the division takes place.

[This means it is permitted with or without the permission of the leader. What is meant by food is what can be eaten: meat or other things. The basis for what he said is found in the *Sahih* in the words of Ibn 'Umar, "We used to get honey and grapes in our raids and we ate them and did not present them to the commander.

The four-fifths of the booty is divided between the army according to the preconditions in the Shari'a.]

30.4 Distribution of Shares

30.4a Those actively involved in jihad

A share of the booty is only given to those who take part in the fighting or who are prevented from doing so by being occupied with the jihad in some other way.

[An active presence is meant, whether fighting or being present to face the enemy. When the rows are formed and fighting has not begun, there is no share for someone who dies then, but there is a share for the one who dies after the fighting stops. Also those who are prevented by things like scouting or bringing equipment or the like receive a share. There is a share for the one who gets lost from the army in enemy territory.]

30.4b If someone is ill

Anyone who falls sick is given a share as is any horse that falls sick.

[If he becomes ill after or during the fighting, i.e. he is present healthy at the beginning of it and then becomes ill and continues to fight while ill. If he becomes ill before being present at the fighting, whether his illness began in enemy territory or Muslim territory, he has no share. If the horse goes lame after fighting or during it, it has a share. Ibn 'Umar said, "It has no precondition, and that is the same if it becomes ill by for some other reason."]

30.4c The share of the horse

A horse gets two shares

[This is the horse and not the camel, mule and ass which have no share. It is limited to one since he spends more for its provision and has no share.]

30.4d The share of the rider

and a rider gets one share.

[There is allowance of what is not ridden. The rider is said to the rider of camels. As for the rider of horses, he is called a horseman. The basis in what is mentioned is that it is sound that the Prophet gave the horse two shares and the rider one share.]

30.4e Slaves, women and children

Slaves do not get a share nor do women nor do children, unless the children are really able to fight, have been given permission by the Imam, and do actually participate in the fighting in which they are given a share.

[Freedom is a precondition to receive it, and so the slave, whether he fights or not, does not get a share. He must be male, so the woman does not get a share, whether she fights or not. He must be an adult, so the child does not get a share except with three preconditions: that child who has not reached puberty is able to fight, has the permission of the Imam and actual participated. Bahram transmits from the *Mudawwana* that it is explicitly stated as well-known that he has no share, whether he fights or not. The literal meaning of the hadith indicates lack of shares. The hadith quoted by Ibn Wahb related that the Prophet did not give a share to slaves, women or children.]

30.4f Servants

A hired servant is not given a share unless he actually fights.

[He must go out with the intention of jihad, especially the one whose uses are owned, like the hired servant, and like the general hireling in the

lack of the share. Ibn 'Umar makes a distinction about those who actual fight.

Three preconditions remain: sanity. Islam and health. The madman has no share by agreement. The dhimmi has no share by disagreement if he does not fight or does fight in the well-known position.]

30.4g When the enemy becomes Muslim and has Muslim property in his possession

If anyone from the enemy becomes a Muslim and has in his possession property previously belonging to the Muslims, that property remains in his possession. If anyone buys any of it from him it becomes theirs and the original owner can only get it back by paying the correct price for it.

[Ibn Naji said it is clear from his words that if he becomes Muslim with free Muslims in his possession, they are taken from him, and it is the well-known position. According to him he is not recompensed for this. If a Muslim buys something in the Abode of War, be it the property of Muslims or that of the dhimmis, it belongs to him, and the owner can only get it back by paying the price which he paid for it if it is lawful to own. If it is something unlawful to own like wine and pigs, its owner takes it without buying it.]

30.4h Rights of the original owner

If property of this kind is divided up as part of the booty the original owner of a particular piece of property has the first right to it provided he pays the correct price for it.

[This is if he finds it with someone who bought it from the booty. If he finds in in the share of someone or who is ignorant of the price, he only takes it for the price connected the right of the other to it.]

30.4i Claiming it before division

If the division has not yet been made he can reclaim his property without having to pay anything for it.

[He means when the Muslim or the dhimmi finds his goods in the booty before the division has taken place and has clear evidence of ownership, he takes it without paying anything, but pnly after taking a legal oath that he did not sell it, give it away, nor was it removed from his property by legal means. Thus it is still be his property.]

30.4j. No one receives more than his basic share

No one is permitted to receive more than their allotted share unless it is given by the leader at his discretion from the fifth apportioned to him and this cannot be done before the basic division is made.

[This is based on what Ibn Wahb related about the Messenger of Allah allotting extra from the fifth at the Battle of Hunayn. This extra is only allotted after the division. On this basis, allotting it before the division is only conceivable by a promise. For instance he says, "Whoever has killed someone has whatever is taken from the corpse." These words can imply prohibition or dislike, i.e. the Imam or general of the army is prohibited from saying this before having power over the enemy because that might lead to the invalidation of their intentions because some of them expose themselves to death for the sake of the goods of this world, and then he would fight for the reward. After the fighting, that does not need to be guarded against.]

30.4k Arms, clothing and personal effects of the enemy

The arms, clothing and personal effects of enemy soldiers killed in the battle is treated as part of the fifth that can be given away at the leader's discretion.

[The Imam only gives them from the fifth according to his discretion. Pickings are what are found with the dead person: clothes, weapons and similar equipment rather the dead idolaters have of bracelets and crowns. It is like that with money. These things are not part of pickings in the well-known school, i.e. as opposed to Ibn Habib who includes the bracelets, crowns and money in the pickings.]

30.5 FORTS (RIBAT)

30.5a. Their excellence

Guarding a frontier post is an action of great excellence, which increases in virtue

[Lingustically ribat means to reside, and in the Shari'a it means to reside at the frontiers in order to defend them. It includes money and other things, the dhimmi and the Muslim. Guarding other things is a consquence of guarding the frontiers. The frontier is the place where there is a possible defensive weakness.

It is related that ribat is beter than jihad based on what is in the *Sahih* where the Prophet said, "Ribat one day in the way of Allah is better than this world and what is in it." It is better because the bliss of the Next World remains and does not run out, and also because ribat is in order to preserve the blood of the Muslims, and preserving their blood is better than shedding the blood of the idolaters.]

30.5b The amount of danger

according to the amount of danger experienced by the people manning that post and the amount of caution they have to take.

[This excellence varies. It according to the number of the enemy, fear and caution. Fear increases caution.]

30.6 RAIDS

30.6a Permission of parents

You cannot go on jihad without the permission of your parents

[If they are both Muslims according to Ibn al-Qasim and with Sahnun in general whether they are Muslims or unbelievers.]

30.6b. A surprise attack

unless the enemy makes a surprise attack, raining your town, in which case it is obligatory for you to put up a defence. In such case parents' permission is not required.

[If there is a sudden attack on the people of a certain town, then the people of the town have to defend it. It is obligatory for the one with a father or without, slave or free. In this slaves have shares because they are called on to perform jihad because when we denied them a share, it was because it was not their responsibility. It is now is their responsibility as mentioned in *at-Tahqiq*. He mentioned that it is obligatory for those near them to help them. The author said that he does not ask for his parents' permission in such a case, since it has become an individual obligation like hajj, the prayer and individual seeking knowledge because he is obliged to obey them in abandoning permissible and supererogatory things, not specific obligations.]

Chapter 31: On Oaths and Vows

[This deals with what is permitted in oaths and vows and what is not permitted or binding. It meas with kaffara (expiation) of the oath and swearing. The *yamin* (oath, right hand) is real in the limb and metaphorical in other contexts. It is said that the yamin is the limb and the oath is called *yamin* because when they made oaths, one of them strike the other persons right hand with his right hand. So it was called an oath.]

31.1 The Form of an Oath

31.1a Oaths are by Allah

Anyone who swears an oath should either do so by Allah

[He should swear by the name of Allah, not by the Prophet or anything else which is esteemed in the Shari'a or one of His attributes, like Oneness, timelessness and existence.]

31.1b. Not making an oath

or keep quiet.

[He should keep quiet unless he makes a proper oath since he is not swearing by Allah. He is forbidden to swear by other than Allah since the Prophet said, "Allah forbade you to swear by your fathers. Whoever takes an oath, should swear by Allah or be silent." So he commands the silence for what is other than oath by Allah.]

31.1c. Oaths involving divorce or emancipation

Anyone who swears an oath to divorce a wife or free a slave is to be punished for doing so although he still has to hold to his oath.

[This is when he is adult and has knowledge and deliberately makes such an oath. That impairs his testimony, It is clear from his words that he is punished, whether he breaks the oath or not. According to Malik the punishment is not defined but is up to what the ruler thinks best: beating, cursing, or the like, which can vary with different people. In addition to punishing someone who makes an such an oath, he is obliged to carry out the oath he made about divorce or freeing when he breaks the oath. If he unsure whether he broke it or suspects it or thinks it probable, he has broken it in the well-known position. If he doubts whether he said , "You are divorced" or not or is unsure about whether he made an oath and broke it or did not make an oath and did not break it, he does nothing.]

31.1d. "If Allah wills" is not said in the oath

No one should make an oath containing the safety clause, if Allah wills.

[This is not done.]

31.1e. No kaffara for oaths in which Allah is not mentioned

There is no kaffara (expiation) except for an oath made using the name Allah or one of His other names or attributes.

[Kaffara is pointless otherwise. It is also done if he uses a name, like the Almighty or the Creator, or one of His essential Attributes, like knowledge, power, will, hearing, seeing, and speech and life. As for actions like provision, an oath is not made by them. The literal meaning

of his words is that "Allah willing" has no force when connected to divorce, as when he says, "If I enter the house, you are divorced, Allah willing." Ibn al-Majishun says that if he means an action, like entering the house, it has force. The position of Ibn al-Qasim is that it does not apply, even if he means the action. When he enters the house, then the divorce occurs. It is that which is believed by Khalil, and is is the well-known position.]

31.1f. Saying it at the same time as the oath

If someone does use a safety clause he does not have to do kaffara as long as he intends the provision and says 'Insha'allah' at the same time as he makes his oath. If this is not the case such a provision bears no weight.

[When he swears by Allah or one of His attributes, he does not have to do kaffara with three preconditions.

1. He must have meant the provision, i.e. intended to dissolve the oath without any difference in the aim is that it was before the oath, during it or after he finishes, then it applies as at-Tata'i states. If he does it without intention, as out of forgetfulness or for blessing, it does not dissolve the oath.
2. He must say "Allah willing"; the intention alone is not enough.
3. It must be connected to the oath before it. So if he is silent more than enough necessary for a breath or sneezes. If he is forced to stop, there is no harm.]

31.2. Kinds of Oaths

There are four kinds of oaths which can be sworn by Allah.

31.2a. Oaths for which there is kaffara

You do kaffara for two of these; namely, if you swear by Allah, "If I do such-and-such a thing, I will do such-and-such a thing", or if you swear by Allah, "I will do such-and-such a thing."

[One of the two is that the oath in the promise to perform a good deed. The first is when he swears that he will do something or not do something, and then if he fails to do, he has broken it.

31.2b. Oaths for which there is no kaffara

The two kinds you do not do kaffara for are firstly when you make an oath about something, thinking at the time it is true and later realising that it isn't. In this case you do not do kaffara, nor is there any wrong action involved.

[The first category is when you think that it is true. This does not mean that you think it is probable. What is meant is feeling certain, not it being unequivocal according to the evidence, but then later the opposite becomes clear. This is what he believes to be true. Belief is strong assumption. If it is not strong, then there in lack of clarity or even doubt. He owes no kaffara and there is no sin involved since Allah says, "*Allah will not take you to task for inadvertent statements in your oaths, but He will take you to task for oaths you make intentionally.*" (5:89) We read in the *Mudawwana*, "There is no inadvertancy except in the oath by Allah or a vow which cannot be avoided, ' i.e. the unclear vow, as when he says, "If I do this, then I have a vow" and the inadvertant has no effect in divorce, setting free or an unclear vow.]

31.2c. Oaths for which there is no kaffara

The other kind is if you swear an oath about something knowing it to be untrue or having doubt about it. In this case there is a wrong action involved but no kaffara.

[A doubtful oath is one, for instance, where you swear that you met someone the previous day but you did not meet him or are unsure about it. Doubt is weak supposition. So he swears to a lie or is unsure, and so he definitely sins, even if what he swears is true. But there is no kaffara if it is connected to the past. If it is connected to the present or future, there is kaffara. It is like that when the inadvertant oath is connected to the future. If it is connected to the past, there is no kaffara.]

31.2d. Repentance in any case.

You must, however, do tawba to Allah, glory be to Him, on account of it.

[Because it is one of the major wrong actions and you should draw near to Him with what you can do of freeing slaves, sadaqa and fasting.]

31.3 KAFFARA

Kaffara for oaths consists of

[There are four types of expiation. There is choice between three forms feeding, clothing or freeing, and fourth follows the lack of ability to do either of the three: it is fasting. The best of the them is feeding which is why he began with it.]

31.3a. Types

31.3a1. Feeding

feeding ten needy people, who are muslim and free, giving one mudd to each measuring by the mudd of the Prophet, may Allah bless him and grant him peace, but according to us it is better to increase that by a third or a half.

[From this is clear that feeding has five preconditions

1. Number (ten) and so it is not allowed to give it to more or less, nor to one several times. When he gives five people two mudds each, he gives to five and completes it with another five people. He can give a larger amount provided that it remains in the possession of the poor and he does not destroy it. The time of paying it must be made clear that it is kaffara. If he feeds twenty people half a mudd, that is not allowed.
2. That they are poor, If he gives it to rich people knowingly, that is not allowed.
3. That they are Muslims. If he gives it to the poor of the dhimmis, it is not allowed, as is the case with zakat.
4. That they are free. If he gives it to a slave, that is not allowed.
5. That what is given of the mudd to each poor person is by the mudd of the Prophet and it not allowed with anything else,.

Two things can take the place of the mudd: two ratls of bread with seasonings of oil or yoghurt, or meat. As for feeding them lunch and dinner, or two lunches or two dinners, and to have lunch or supper, that is not enough, even if it reaches a mudd. We think it better to increase give more than a mudd.]

You add a third or a half according to what the prevailing standard of living is and whether the price of staples at the time is high or low. However if you only give one mudd regardless of these considerations, you have fulfilled the obligation.

[This is based on the medium standard of life and the type of grain usually eaten, no matter what the price. Any a mudd in any land and in every time without adding to it satisfies it because it is the obligation.]

31.3a2. Clothing

If you give clothing you should give a man a robe and a woman a robe and a head-covering.

[If he chooses clothing, then he clothes 10 poor people. There is no difference between the child and the adult in giving the clothing and support. It is not a precondition that the clothing be from the middle of its people because Allah made that a precondition in food but not clothing.]

31.3a3. Freeing

Kaffara can also be done by freeing a believing slave

[They stipulate preconditions in it. One is that the slave is a believer, and so an unbeliever is not adequate. The second is that the slave is free of faults which would impair him, like blindness, senility, and great lameness. As for that which does impair, it is allowed. The third is that it is someone who has firm ownership after buying, and not a conditional purchase. The fourth is he has full ownership, and is not shared, The fifth is that there is no contract to purchase freedom.]

31.3a4. Fasting

but if you cannot do this or feed people, then you should fast three consecutive days although if you do them separately, you have still fulfilled the obligation.

[If all three are impossible, then there is fourth course which he indicates. It is recommended to fast for three consecutive days because it is hurrying to discharge responsibility. If the three are separate, then it is still correct, but there must be an intentionmade each night.]

31.3b When kaffara is obliged

You can do kaffara either before or after failing to fulfill a vow, although doing it afterwards is preferable according to us.

[This appears to be generally applicable, whether the oath is for an act of piety or on account of failing to do something, like kaffara for the fast or something else, but it is preferable to expiate it afterwards.]

31.4 Vows

31.4a. Which vows must be fulfilled

Anyone who makes a vow involving obedience to Allah must fulfill it whereas anyone who makes a vow involving disobedience to Allah must not fulfill it and no reparation is necessary.

[Linguistically nadhr means making something binding, and in the Shari'a it is to oblige oneself to do something which is an act which brings one near Allah. There are two categories: a vow involving obedience which must fulfilled, and a vow involving disobedience which must not be fulfilled. When it is not obligatory to fulfil it, according to Abu Hanifa there is kaffara for it, but that is not the position of the majority, as he stated here.]

31.4b. Vows made respecting other people's property

Anyone who makes a vow to give sadaqa with someone else's money or to free a slave belonging to someone else is not under obligation to fulfill it.

[He owes no sadaqa or freeing in that which has no precondition. If it is connected to a precondition, then he must do it when the precondition

exists according to the famous position, like, "I would free so-and-so if I owned him."

31.4c Fulfilling the vow

Anyone who makes a vow that if he does a particular thing, he will do a specific good action, such as praying or fasting or going on hajj or 'umra, or giving away something specific as sadaqa, must do what he said he was going to do even if he fails to fulfill his vow straightaway.

[Whether it is obligatory or forbidden, and so he binds himself to do what he vowed what he stipulated. This is when he mentions a specific thing with his tongue or in his heart and it is a pious action. The unlawful and permissible are excluded and so a vow which does not involve a good action would not be binding. So in the case of sadaqa, he may name an amount or simply make an intention connected to worship and ability. That is then binding. He must carry it out, even if he did not intend an amount. If it is prayer, then it is the least of that to which the name prayer applies, which is two rak'ats. In the case of fasting, when it is not specified, it is the the minimum which can be fasting is applied, which is a day. If he says, "If I speak to so-and-so, then I must walk to Makka," then it is obliged for him to walk on hajj or 'umra. As for sadaqa, if he does not name anything, he must give a third of his property. If he names, then the literal meaning of his words is binding, even if it is all his property. Ibn 'Umar said. "If he mentions his house and it is all that he has, then he must do that.]

31.4d. When the vow is not accompanied by an oath

This is the case even if his vow is not backed up by an oath.

[It is binding.]

31.4e. An unspecified vow

If anyone makes a vow without specifying a particular good action to be done if he fails to fulfill it, and then does fail to fulfill it, should atone for it by doing the kaffara for oaths.

[If he does not name anything specific in his vow so that it can be achieved, as when he says, "By Allah, I have made a vow" without saying whether it is prayer, fasting, hajj or the like, he owes kaffara for an oath in the School.]

31.5. OATHS AND VOWS TO DO WRONG

31.5a. There is no reparation for a vow to do a wrong action

Anyone who makes a vow to do a wrong action such as killing someone or drinking wine or something similar, or to do something which is neither a good action nor a wrong action, does not have to make any reparation for failing to fulfill it, but should seek forgiveness from Allah.

[Or something permissible or disliked. He does not have to do kaffara.]

31.5b. Kaffara for such oaths

If anyone swears by Allah to do a wrong action he should do the kaffara for oaths and not do the thing he swore to do. However, if he is so bold as to do the thing he swore to do he has committed the wrong action but does not have to do the kaffara for breaking his oath.

[If he swears by the name of Allah or one of His attributes, then he should do kaffara. If he does not action without concern for its consequences, then he does not have to perform kaffara.]

31.6. KAFFARA FOR VARIOUS OATHS AND VOWS

31.6a. When there is a double kaffara

Anyone who says in his oath "By the pact of Allah and His covenant" and then fails to fulfill it has to do a double kaffara.

[Because the covenant is an oath and the pact is an oath. If he combines them, he swears two oaths. What he mentions differs from the famous position which is found in *at-Tawdih* that the kaffara is not repeated when the oath-taker intended to stress the oath or it was unintentional.]

31.6b A single kaffara

However, anyone who emphasises his oath about one specific thing by repeating it only would have to do a single kaffara.

[Ibn al-Hajib said when the oath is repeated on the same thing, it is not a new oath, if the aim is repetition, i.e. there is not another kaffara. Ibn 'Abdu'l-Salam he means that when he swears to someone by one of the Names or Attributes of Allah and then repets the oath by that specific Name or Attribute connected to that specific thing. If he intends a second oath to stress the first or or does not have an intention, he does not have to do the kaffara again. If he intended multiple kaffara, then it is agreed that it is multiple. If he intends to formulate and is not alluding to a multiple kaffara, then the famous position is that it is not multiple. It is understood that it as about one thing. If, for instance, he repeats it about two things, he owes the kaffara of an oath for each, as when he says, "By Allah, I wil not speak to so-and-so, and by Allah, I will not eat from this food, and by Allah, I will not wear this garment."]

31.6c. Oaths for which there is no kaffara

Anyone who says, "I am a mushrik," or that he is a Jew or a Christian if he does such-and-such, does not have to make any reparation and nothing is binding on him except that he must seek Allah's forgiveness

[I seek refuge with Allah - or any similar sort of expression. He owes no kaffara because it was not by any of the Names of Allah or His Attributes and so does not entail a binding oath. He must only repent and no shahada is demanded of him. Of course, asking forgiveness is an act of devotion to Allah, like emancipation, sadaqa and fasting.]

31.6d. No kaffara for making something lawful unlawful

and anyone who makes something haram for himself which Allah has made halal does not have to do kaffara

[In the form of food or drink. He owes no kaffara but must ask forgiveness for that sin because it is Allah who makes things lawful and unlawful and he has criticised Allah by doing that by the words of the Almighty, "Say: 'What do you think about the things Allah has sent down to you as provision which you have then designated as lawful and unlawful?' Say: 'Has Allah given you authority to do this or are you inventing lies against Allah?'" (10:59)

There are two exceptions to that.]

31.6e. An exception: divorce

except in the case of his wife who then does become haram for him until after she has been through another marriage.

[This is when someone says that his wife is haram for him. This is because making her *haram* amounts to a treble divorce and so she is not lawful for him until she has been through another marriage which has

been consummated. If it has not been consummated, then a treble divorce must have occurred in it unless he intended the minimum. The second case is when he makes his slavegirl unlawful and intends to free her. By that she becomes unlawful to him.]

31.6f. A vow to give away all of one's property

If you make an oath or vow to give your wealth away as sadaqa or as a free gift [to the House of Allah} giving away a third is sufficient to fulfil the oath.

[Ibn 'Umar said that if that that is the case in an oath or vow and also when he does not name something specific. If he names it, it is binding on him, even if it is all of his property. This is also the case when he gives it to a specific person like Zayd or the Banu Zayd: all of that is binding when he makes the oath unless he would be reduced and then he is left what a bankrupt is left.]

31.6g. A vow to sacrifice one's son

If you make an oath to sacrifice your son, then if you remember what happened with Ibrahim you should sacrifice an animal which should be slaughtered in Makka and the minimal sacrifice for this is a sheep. If, however, the example of Ibrahim does not enter your thoughts there is no need for you to make any reparation.

[As when you say, "If I do not do such-and-such, I will sacrifice my son," and then recall the story of the Prophet Ibrahim and his son, then you sacrifice an animal, a camel, cow or sheep, in Makka or at Mina if you stop at 'Arafat. It is said to be recommended or obligatory, which is the more likely. The minimum is a sheep which is disliked if a larger animal is possible. It can be male or female. If you do not remember the story at all, then there is no sacrifice or kaffara, but you should ask Allah's forgiveness.]

31.7 AN OATH TO WALK TO MAKKA

31.7a. Such an oath is binding

If you make an oath to walk to Makka and fail to do so it is still binding on you to walk from the place where you made the oath and it is up to you whether you go for hajj or 'umra.

[As when you say, "If I do a certain thing, I will walk to Makka." If you do that thing, then you must walk from the land in which you made the oath, not from the place in which you resides, unless you specified a place. You have a choice about whether it is in hajj or 'umra when you did not intend either. That is the famous position: there is a choice when there is no intention. The end of achieving the oath in 'umra is after finishing sa'y. In the hajj it is after finishing the Tawaf al-Ifada.]

31.7b. When riding becomes impossible

If it becomes impossible for you to walk at any point you should ride. But if you later become able to walk you should walk that part of the journey where you rode. If you are certain you will not be able to fulfill the oath you stay where you are and make a sacrifice. What 'Ata' said about this is that you should not go over any part of your journey a second time and that you can sacrifice instead.

[This oath is dependent on ability. If you become able to walk, then you ride and later you can return and walk. If you know that he cannot, you make a sacrifice - preferably a camel, or a cow, or a sheep. If you do not know what you walked and what you rode, you walk the whole way. If you know that you will not be able to walk, you sacrifice and do not have to return again. 'Ata' ibn Abi Rabah, one of the *mujtahids*, said that you do not have to return again and the sacrifice takes care of it. This is part of the disagreement in the Maliki School in which there is choice.]

31.7c When someone who has not performed hajj makes this vow

If you have not yet gone on hajj (and it was not part of your intention when you made the oath to walk to Makka to do so) you must do an 'umra first and when you have finished your tawaf and sa'y and shorten your hair, you may then go into ihram from Makka for the fard of hajj as a mutamatti'. In any other case you should shave your head but in this instance it is recommended to merely shorten the hair in order to retain an unkempt appearance during the hajj.

[If you not have not yet performed hajj when you make an oath to walk to Makka, then it is mandatory that the walking be in 'umra, based on what the *Mukhtasar* states, when there is no intention. When you have an intention, you walk as you intended. It is recommended that after the tawaf, sa'y and shortening your hair, you then assume ihram from the mosque according to the *Mudawwana* or at its door according to Ibn Habib. Then you make the intention for the hajj of Islam, and you add 'umra to hajj if it is in the months of hajj. He should shorten only shorten and not shave his hair in this case.

31.7d. An oath to walk to Madina or Jerusalem

If you make an oath to walk to Madina or to Jerusalem it is alright to ride to them if your original intention was to do the prayer in either of the two mosques. If you meant something else you do not have to fulfill you oath at all.

[You can walk to them in the well-known position. Ibn Wahb said that you must walk to them while al-Lakhmi, al-Maziri and and others recommended that because it is can act of piety which should be fulfilled. You are obliged to go to them only if you intend an obligatory prayer - although some say a voluntary prayer and retreat in their

mosques. If you do not intend to pray, you owe nothing because walking itself is not worship.]

31.7e. An oath to walk to any other mosque

If you make an oath to pray in any mosque other than one of these three, you should not go either walking or riding, but you should do that prayer in the place where you are.

[Whether it is near or far based on what is reported in Muslim where the Prophet said, "Animals are only saddled for three mosques: my mosque, the Masjid al-Haram, and the Masjid al-Aqsa."]

31.8 A Vow to Man the Frontier

If you make an oath to man a post in any place on the frontiers of Islam you have to do it.

[Even if he is one of the people of Makka and Madina. That vow should be fulfilled because manning the frontier is an act of devotion to Allah and if you vow an act of devotion, you must fulfil your vow.]

Chapter 32: On marriage, divorce, remarriage, 'Dhihar'-repudiation, vows of celibacy within marriage, mutual cursing (li'an), 'Khul'-'divorce, and suckling

[These are eight things. The first, marriage, is the root and rest are consequences. Each has a linguistic meaning and usage which we will mention in its proper place. Marriage (nikah) linguistically means intercourse and is used as a metaphor for the contract. In technical usage, it is actual for the contract and metaphorical for intercourse. It is used in custom to mean to mean intercourse as the Almighty says, "Until she marries a husband other than him," (2:230) and so it is known from this that *nakaha* is used for intercourse between any man and woman. Marriage in the sense of intercourse is only permitted in the Shari'a by one of two matters: the contract of marriage or ownership by the words of the Almighty, "those who guard their private parts – except from their wives or those they own as slaves, in which case they are not blameworthy." (23:5-6)

Marriage has four pillars: the wali, the place, the form and the obligatory dower.]

32.1 Obligatory Elements for the Validity of Marriage

32.1a. A guardian

Marriage is not valid without a guardian (wali),

[There is no marriage contract except with a guardian. As Ibn 'Arafa says, the guardian is either her owner (in the case of a slave), or her father or male relative, or an agent or guardian, or the authority (the ruler) or someone who is Muslim.

Preconditions for that are being Muslim, free, adult, sane and male. Integrity is not a precondition for the validity of the contract in the famous position, but part of its perfection, nor is common sense. So the fool can make a contract for his daughter with the permissible of his guardian according to Ibn al-Qasim. This is a precondition of validity and the contract is not valid without a guardian by the statement of the Prophet, "A woman does not give herself or another woman in in marriage. The woman who gives herself in marriage is a fornicatress." (as-Daraqutni who said that it is sahih and hasan.) If it occurs without a guardian, then the marriage is null and void both before and after consummation, even if she gives birth to several children. There are two transmission about whether the nullification is a divorce or not.]

32.1b. A dowry

a dowry,

[The dowry is a precondition for the validity of consummation because of the words of the Almigthy "Give women their dowry as an outright gift." (4:4)]

32.1c. Two witnesses

and two legally acceptable witnesses.

[Having two witnesses is also a precondition for the validity of consummation, not for the contract. It is a precondition that the two witnesses of the marriage be reputable, based on what Ibn Hibban

transmitted in his *Sahih*: the Prophet said, "There is no marriage except with a wali and two legally acceptable witnesses." Marriage without those preconditions is invalid according to the hadith. If there are no legally acceptable witnesses, then there should be a lot of witnesses, like 30 or 40.

One of the preconditions of the validity of the contract is the form of the contract from the wali and husband or agent. The guardian must use an expression which would entail permanent transfer like "I have given to you in marriage". The husband must use an expression which entails acceptance, like "I have accepted." The order is not a precondition, but is recommended. If the husband speaks first and then the guardian speaks after him, the contract is sound as long as the two responses are immediate; a slight difference does not impair the contract as opposed to a major difference. This would be, for instance, if a man who is ill were to say, "If I die from this illness, I have given my daughter in marriage to so-and-so," and then dies a month later, and the husband accepts the contract after his death. The marriage is not valid.

NOTE: A marriage is contracted by the acceptance and answer, even if it was intended a a joke on both sides because marriage is a serious matter.]

32.1d. Witnesses must be present at the contract

If these two are not present to witness the actual making of the contract, it is not permissible for the couple to consummate their marriage until the witnessing has taken place.

[i.e. the guardian and husband. In one text, it has the singular, meaning the husband. If it is consummated without witnessing, the marriage is invalidated with a final divorce and they receive the hadd-punishment if they did not make it known and do not have the excuse of ignorance and

admit intercourse. If they make it known, there is no hadd, especially they have a feast, drums and one witness.]

32.1e. Minimum amount of dowry

The smallest acceptable amount for a dowry is a quarter of a dinar.

[That by which the contract becomes valid. The dinar is of pure gold and in silver it is three dirhams of pure silver. It can be an equivalent value in goods. There is no maximum because the Almighty says "Give one of them a qintar." (4:20)]

32.2 The Authority of the Guardian

32.2a. A father arranging the marriage of a virgin daughter

A father can arrange the marriage of his virgin daughter without her permission even if she is beyond the age of puberty. It is up to him whether he consults her or not.

[To whomever he wants for the dowry he wishes, even for less than a suitable dowry. He can give her choice, and it states in *al-Jawahir* and elsewhere that it is recommended that he ask her permission.]

32.2b. Someone other than the father arranging the marriage of a virgin

However, if anyone other than the father is arranging the marriage of a virgin, such as a guardian appointed in the father's will or anyone else, he cannot give her in marriage unless she is beyond the age of puberty and has given her consent. In this case her silence is taken as consent.

[It says in the *Mudawwana* that an orphan is not given in marriage by her guardian until she comes of age and gives permission. Ibn Naji said, "unless there is a will from the father to marry her to a certain person and then he acts in loco parentis. There is a text in the *Mukhtasar* which states that the guardian as the same position as the father in compulsion to marriage with two preconditions. One is that he the husband is specified and the other is that the father commands that. The shaykh states after this, "The girl is not married unless her father commanded that she be married." What he mentioned about other relatives than the guardian, like the grandfather and brother, is known in the School.]

32.2c. A woman who has been married before

A woman who has already been married cannot be given in marriage, by her father or anyone else unless she herself agrees to it and gives verbal consent.

[When she is adult, sane and free and free has not lost her virginity through injury or fornication, be she sensible or foolish, by her father or anyone else. It is limited to the adult instead of the child who loses her virginity before becoming an adult. He marriage is not dependent on her consent. "Sane" excludes the mad woman. Her father can compel her, even if she has children. The judge can also compel the adult mad women if she has no father.

What is mentioned about asking her permission is by word, as Malik, ash-Shafi'i, and Muslim transmitted, "The widow is is more entitled to herself than her guardian, and the virgin is asked for consent for herself, and her consent is her silence." What is meant by the widow is the non-virgin. The difference between the two is the shyness which is found more fully in the virgin rather than the non-virgin. It is reported from Ibn al-Qassar that modesty has ten parts: nine in women and one in men. When a woman marries, a third of it goes. When she gives birth, two-thirds is gone, and if she fornicates, it is all gone.]

32.2d. The necessity of the consent of the guardian

A woman can only be married if she has the consent of her guardian or someone suitably qualified from among her people, such as one of her male relations, or the governor.

[Or her agent since a guardian is a precondition for the validity of the contract - there is no disagreement about that with us - or with the permission of someone qualified, which means those who possess the preconditions of guardianship which are: being male, free, sane, adult, not in ihram, and not a unbeliever for a Muslim woman. The ruler acts in default of such a person.]

32.2e. Lowly Women

There is a difference of opinion regarding lowly women (*daniyya*) as to whether they can have a guardian that is not related to them or not.

[This is the woman who has neither beauty, money nor position. When she has beauty, money or position, she is noble. Position is like lineage and descent, or a noble father.

A guardian who is not related is a Muslim, i.e. he is not a guardian nor one qualified from her family nor a client nor a ruler when there is a particular guardian. Ibn al-Qasim said that she is permitted to appoint him even when there is a relative. Ashhab said that that is not permitted unless there is no relative. So the two shaykhs agree on the validity but differ about when this can be done. Ibn al-Qasim says that it is valid although disliked, when is the reliable position, while Ashhab said that it is not.]

32.2f. Order of precedence in matrimonial guardians

A woman's son has more right to be her marriage guardian than her father and her father has more right than her brother. After this the nearer the relationship the greater the right.

[The son is a closer relative because he is the most entitled of her relatives after her father. The father is more entitled than the brother (full or half) because the brother is not as close as than the father and the father will debar him from inheritance.]

32.2g. The marriage is valid when the more distant acts as guardian

However, if the more distant relative acts as guardian the marriage is nevertheless still valid.

[Even when a nearer relative exists, like the brother. The marriage is valid because the order between them is only about suitability. Differing from it is only disliked provided the marriage is with an equal. If the husband is not an equal, then it is obliged for the closer relative to reject the marriage, even if the woman is pleased with it. If he does not reject it, it is presented to the ruler, i.e, it is obligatory to reject it and she is not permitted to consent. It is invalid.]

32.2h. A guardian appointed in a will

A guardian appointed in a will can arrange the marriage of a male child under his guardianship

[i.e. he can compel him to marry, like the father, when that has benefit, like marrying him to a rich or noble woman.]

32.2i. The limitations of such a guardian

but he cannot arrange the marriage of a female child unless the father has given him specific instructions to do so.

[And if he has specified the husband, when he says "Marry her to so-and-so." According to the *Mukhtasar*, it is enough that he commands her to compel her to marry that he can marry her to whomever he wishes.]

32.2j. Agnate relatives

Male relatives on the maternal side are not considered suitable as marriage guardians who should rather come from the paternal side.

[To act in giving in marriage, whether they are heirs like the brothers by the mother or not, like the maternal uncle. The guardians come from the paternal side, the stronger being advanced first. So the full brother comes before the half brother by the father. Ibn 'Umar said, "It is clear from his words that the guardian is only one of the paternal relatives, and there is a contradiction when he says 'someone suitably qualified from among her people, or the governor.' The reply is that the what is meant here about the relative being only from the paternal relatives does not preclude the one who is not a paternal relative being a protector or ruler, and so it is relative.]

32.3 Competition Between Suitors

No one should propose marriage to a woman if another proposal has already been accepted, nor should anyone try to outbid his brother, if an agreement has already been reached.

[According to what al-Fakhani said, "The expression means a prohibition." This is is to propose when there is an outstanding proposal and to bid when there is an outstanding bid provided an agreement has

been reached between the couple of the parties to the bid. In respect of marriage, this means that the couple incline to one another so that only the offer and its acceptance remain. In the sale it is a precondition that the money be weighed, for instance, and the goods free of faults. If he sees a fault, he can return it.]

32.4 Forbidden Types of Marriage

32.4a. The shighar marriage

A 'shighar' marriage - which is when there is a direct exchange of daughters without any dowry - is not permitted;

[There are three types of forbidden marriage. Shighar is to exchange one woman for another. The basis for its prohibition is found in the *Muwatta'* and two *Sahih* Collections where the Messenger of Allah forbade the shighar. It is derived from lifting, as when a dog lifts its leg to urinate or when a person lifts their leg for copulation. It is also used from a land is devoid of people. It is used for exchanging women without a dowry. The pure shighar is that a man gives his daughter in marriage to a man provided that he marries his daughter to him with no exchange of dowry. The woman whose marriage is consummated receives an appropriate dowry and the unconsummated has nothing.]

32.4b. Marriage without a dowry

neither is marriage without a dowry;

[If they stipulate that it be dropped. If that happens, then it well-known that it is nullified before consummation, and she receives nothing. There are two positions about whether its nullification amounts to a divorce. After consummation she receives a suitable dower and the child is connected to him and there is no hadd-punishment because of the dispute.]

32.4c. Temporary marriage

nor is temporary marriage - which is marriage for a specified, limited period.

[By consensus. This is found in Khalil, the *Mudawwana* and elsewhere, whether it is a short or long term such that the person will not live that long. Ibn Rushd said that it is marriage with a dowry, guardian and witnesses which is unsound by setting a term, and its judgement is that it is always invalid without a divorce. If anyone marries a woman in a temporary marriage but does not enjoy her, it is permitted for his father and son to marry her. There is no hadd for them, and the child is attached to the father and she observes full 'idda. She receives no dowry if it was voided before consummation. If it is after that, she receives the dowry appropriate to her whether or not a dower was stipulated for her.]

32.4d. Marriage during the idda

Marriage during the 'idda period is also forbidden

[This means forming a contract while she is in her 'idda, whether that it for the death of a spouse or divorce, irrevocable or revocable, based on the words of the Almighty, "until the book reaches its term." The consensus on that if anyone forms a contract with a woman during'idda, it is nullified without divorce because it is agreed to be unsound. If it is consummated, they are punished as are the witnesses if they are aware of that. She received the named dowry and children are connected but the couple do inherit from one another if one dies before it is nullified because the contract was unsound and she is always forbidden to him. When there is only a contract which it is nullified, she is not forever forbidden and he can marry her after the 'idda is he wishes.]

32.4e. Marriage contracts containing uncertainty

as is any marriage involving uncertainty (gharar) in either the terms of the contract or the amount of the dowry or any marriage in which the dowry includes anything whose sale is forbidden.

[Like marriage by choice, or where the dowry consists of an runaway slave or runaway camel, or if the dowry is unlawful, like wine and pigs. If anyone of that occurs, then it is invalid before consummation and she has no dowry. It is established after it with the dowry of a women like her.]

32.4f. When there is a defect in the marriage

Any marriage which is invalid because of some defect in the dowry should be dissolved before the consummation takes place. However, if the marriage is consummated, it is considered valid and the man should then pay the dowry appropriate to the circumstances of the woman he has married.

[Like a marriage for what cannot be lawfully owned, like wine, or is permitted but not valid to sell, like a runaway slave. It should be dissolved by divorce with no dowry. If she has taken it, she returns it. If it is consummated, and only discovered afterwards, she receives a suitable dowry for someone of her deen and lineage.]

32.4g. Defective marriage contracts after consummation

If it is the contract that is defective but the marriage is not dissolved until after it has been consummated, the specified dowry must be paid and any marriage bars (muharim) that would have applied if the marriage had been valid, still apply.

[This is like a marriage without a guardian which is invalid before and after consummation. If it is voided before consummation, there is no dowry. But if it has been, a specified dowry is paid or a suitable dowry. When an invalid marriage is nullified, the bars to marriage formed by it are still binding. just as would have been the case in a valid marriage. If the marriage is nullified before consummation, these bars do not occur unless some of the preliminaries to intercourse have taken place, like kissing and embracing.]

32.4h. Fake marriage does not permit remarriage

Nor does such a marriage make it possible for a man to remarry a woman whom he has previously divorced with a triple divorce.

[i.e. through an unsound marriage after it is agreed that it is unsound, even if intercourse occurs several times. As for a marriage whose validity is disputed and she is divorced after confirmed intercourse, then she is lawful based on the evidence of whether there is intercourse or not. It achieves imposing bars against intercourse without making marriage lawful to be careful on either side.]

32.4i. It does not entail being muhsan

Nor do the two parties involved attain 'muhsan' status.

[Because one of the preconditions of becoming lawful and muhsan is the validity of the contract. The correct position is that the couple do not achieve muhsan status through an invalid marriage as we read in *at-Tahqiq*.]

32.5 Forbidden Degrees

32.5a. Unlawful through blood relationship

Allah has made it haram to marry seven categories of women through blood relationship and seven through suckling and marriage relationship. He says, may He be exalted, "Haram for you are your mothers and your daughters and your sisters and your father's sisters and your mother's sisters and your brother's daughters and your sister's daughters." These are the ones who are haram through blood relationship.

32.5b. Unlawful through suckling or marriage relationship

Those who are haram through suckling or marriage relationship are, as Allah says: "Your mothers who have suckled you and your sisters through suckling,

[This applies whether the nurse is a virgin or non-virgin, even if not yet of puberty, and even if it is a hermaphrodite, alive or dead, when there there is milk in the breasts. The suckling can be once or several times. Mothers and sisters are the only two mentioned in the Qur'an: one is the root and one the branch to indicate that it encompasses all.]

32.5c. Wives' mothers

your wives' mothers,

[Every woman who has a connection by birth to the wife, however high, whether he made a contract with her when he was adult or young. The majority of the people of knowledge say that it is general whether or not the marriage was consummated. A marriage contract with the daughter makes her mother unlawful. Other people like 'Ali and Ibn 'Abbas say that "those you have gone into" is a precondition for this and the step-daughter. According to their school, when a man marries a woman and divorces her before consummation, he can marry her mother.]

32.5d. Step-daughters

your step-daughters living in your households, if you have consummated your marriage with their mothers - if you have not consummated it there is no harm in marrying them -

[Stepdaughters are the wife's daughter. No consensus about that is understood except what is related from 'Ali that she is not unlawful when she is in the household. There is disagreement about consummation. Ash-Shafi'i says that it is intercourse while al-Baydawi said that it means to go behind a curtain with them which is a well-known allusion to intercourse. Malik and Abu Hanifa said that it means enjoyment with touching, kissing, even if nothing happens from that.]

32.5e. Son's Wives

the wives of your sons who are born from your loins,

[However lows whether the marriage was consummated or not. This applies to milk sons as well by agreement, based on what the Prophet said: "Suckling makes unlawful what lineage makes unlawful."]

32.5f. Two sisters at the same time

or being married to two sisters at the same time except if it has already happened."

[Whether by marriage or ownership of if one is by marriage and the other is a slavegirl. An exception is made regarding what has already happened. If it happened before, and has been removed by Islam, Allah excuses it. Islam eliminates it but there is no punishment for it.]

32.5g. Father's ex-wives

And Allah ta'ala also says, "Do not marry any of the women whom your fathers married."

[Whether the marriage has been consummated or not. It is by the contract that she becomes unlawful to the son. It is the same with the ex-wife of the grandfather.]

32.5h. Milk causes marriage barriers

And the Prophet, may Allah bless him and grant him peace, made suckling the same as blood regarding the categories of relationship which are haram for marriage.

[This is in the two *Sahih* collections. What birth makes unlawful, suckling makes unlawful. The ayat which indicates the prohibition of being married at the same time relatives other than two sisters and the Sunna adds further categories. Here he indicates here a prohibition made by the Prophet:]

32.5i Being married to a woman and her aunt

And he also made it haram for a woman to marry a man who is married to any aunt of hers.

[It is transmitted in the *Muwatta'* and the two *Sahih* collections. The precise rule is that it applies to every two women between whom there is kinship and suckling which prevents them being married together, and so it is unlawful to be married to them both at the same time. If he is married to both of them, both marriages are always null and void, even if he has consummated the marriage, without divorce or dowry for the one whose marriage has not been consummated. If the first woman knows, then the second marriage is void and the first marriage is confirmed and the marriage of the one who claims she is the second is nullified, but it is by divorce. If the first knows of the second and the husband does not claim knowledge about which marriage was first, both marriages are void.]

32.5j. The contract entails marriage barriers

When a man has married a woman, the existence of the contract even without the marriage having been consummated, makes that bride haram for his father and grandfathers and his sons.

[This bar is not based on intercourse.]

In the same way, the bride's mother and grandmothers become haram for him.

[This explains the "mothers of your wives". By a contract with the daughter, the mother becomes unlawful, whether the marriage is consummated or not.]

32.5k. The case of the ex-wife's daughters

However, her daughters are not haram unless either he has had sexual intercourse with her or has experienced physical pleasure from contact with her, as a result of having married her or owned her as a slavegirl or the same thing having happened as a result of a doubtful marriage or ownership.

[Even by looking at other than her face or hands. In the case of the doubtful marriage, such a contract does not make the daughter unlawful. Consummation, intercourse or enjoyment of her makes her unlawful. Looking at her face or hands, even with pleasure, does not. Enjoyment by sound marriage is evident. A case of doubt, for instance, would be when the marriage is a fifth one, or she is in 'idda without him knowing and he enjoys her, or he had intercourse with a woman thinking that she is his wife and so all the branches of each of those women mentioned are unlawful for him.]

32.5l. The effect of fornication

Zina (fornication or adultery) does not make partners haram who would normally be halal.

[Even if this is multiple, it does not create the bar either in the root or the branch. It is lawful for him to marry her mother or daughter (as long as it is not his own daughter, who is unlawful to him. That is the position of Malik in the *Muwatta'*. His evident words in the *Mudawwana* are different which says: if he fornicates with the mother of his wife or her daughter he should divorce her. Most shaykhs say that this divorce is mandatory. So what is in the *Mudawwana* and the *Muwatta'* differ. Most shaykhs prefer the *Muwatta'* and it is relied on because all the companions of Malik agree on it except Ibn al-Qasim. Some prefer what is in the *Mudawwana* since Ibn Habib mentioned that Malik said that he had retracted what was in the *Muwatta'* and said that it was unlawful.]

32.6 Intercourse with Non-Muslim Women

32.6a Women who are not People of the Book

Allah has made it haram to have sexual intercourse with a kafir woman, not from the People of the Book, either through marriage or ownership.

[This is for the Muslim. This is based on the words of Allah, "Do not marry idolatrous women until they believe." (2:221) Al-Fakhani said that this includes the Magians and Sabaeans who are the people who deviated from Judaism and Christianity and worshipped the angels. It includes idolaters who actually worship idols and others who worship other things like the sun and the moon.]

32.6b. Women of the People of the Book

It is halal to have sexual intercourse with women of the People of the Book if you own them as slaves or are married to any of their free

women, but it is not halal for either a free man or a slave to have sexual intercourse with slavegirls from among the people of the Book through marriage to them.

[This is based on the ayat of Allah, "or what your right hands own." We read in *adh-Dhakira* that because the People of the Book have been honoured by the Book and addressed by the Almighty Lord, their women and food are permitted. Others lack this honour by their deprival. It is reported from 'Abdullah ibn 'Umar ibn al-Khattab that it is not permitted to marry a free Kitabi woman by evidence of the ayat of al-Baqara. He says, "There is no *shirk* greater than her statement that her Lord is 'Isa."]

32.7 Marriage to slaves and stepmother's children

A woman cannot marry her slave, nor her son's slave and a man cannot marry his slavegirl nor his son's slavegirl. He can, however, marry his father's slavegirl and his mother's slavegirl.

A man is permitted to marry his stepmother's daughter from a previous marriage.

[This is clear when he had the daughter before the marriage and was weaned. When he married her while she was nursing or the father has divorced her and then she married a man and had a girl, can the daughter of the first husband marry this girl or not. There are are three positions in that. The most likely of them is the prohibition and dislike out of caution. Then he mentioned the reverse of this question]

And a woman can marry her stepmother's son from a previous marriage.

[By other than her father. This is when her father marries her after the child is weaned. If he marries her while she is nursing, he is her step-brother by nursing.]

32.8 Number and Condition of Wives

Both free men and slaves are permitted to marry four free women whether muslims or from the People of the Book. Slaves can marry four muslim slavegirls and free men can also do this but only if they are afraid of committing *zina* and do not have the means to marry free women.

32.9 A Man's Duties Towards His Wives

32.9a. Equal treatment

A man should treat his wives equally.

[A man should be equitable with his wives, whether they are free or Muslim slaves or Kitabis. This obligation is indicated by the Book, Sunna and consensus. As for the Book, it is the words of the Almighty, "But if you are afraid of not treating them equally, then only one," (4:3) i.e. choosing one is a command of Allah Almighty to confine oneself to one if you fear injustice. This indicates that justice is obligatory. As the for the Sunna, the Prophet said, "If someone has two wives and is not fair between them, he will come on the Day of Rising with one side lower than the other. The four *Sunan* relate it and the Community agree that it is obligatory. Whoever is not fair between his wives disobeys Allah and His Messenger. He is not permitted to be Imam nor is his his testimony accepted. The preferred position that he confines fairness to the spending the night. As for clothing and maintenance, that is according to the state of each of them: the noble is suitably provided for and the lowly is suitably provided for. There is no obligation in intercourse, but it is forbidden for him to hold back from one in order to

be keen towards the other. The division is a day and night or two days if the wives agree.]

32.9b. Maintenance and Housing

He is responsible for their maintenance and housing to the extent that his means allow.

[The husband, free or slave must maintain and provide for his wife, free or slave, Muslim or Kitabi. The literal sense is that it is only according to his situation. The well-known position is that her situation is also observed and so his like spends for her like in both his hardship and ease. It is the same with clothing. He permitted to give the price to pay for what he owes. He does not have to eat with her. There is agreement that she can divorce him if he is unable to support her after some delay in the well-known position. An opposite position is that he can be divorced without delay which was mentioned by Bahram. His divorce is not an irrevocable one, even if the judge impose it, but it is not valid for him to take her back unless he finds some wealth which will enable him to be able to support her.]

32.9c. Rights towards slavegirls

A man's slavegirls and or a slave by whom a man has had a child (umm walad) are not allotted nights in the same way as his wives are.

32.9d. When he becomes liable for support

A man is not liable for maintenance until his marriage has been consummated, or he has been called on to consummate his marriage, given that it is with someone with whom sexual intercourse is possible.

[Whether she is an orphan or otherwise, free or slave, simply by the contract in the well-known position. Maintenance is obliged by two things. One is consummation which means they are alone together whether there is intercourse or not, and whether or not she is someone with whom it is possible to have intercourse since she may have a physical impediment, and the husband is adult and they are not supervised. The second thing is when he is invited to consummate it and the husband is adult and they are not ill.]

32.10 MARRIAGE BY PROXY (*TAFWID*)

32.10a Definition

Marriage by proxy is acceptable. This is when the husband and the guardian make a contract without mentioning a dowry

[Without dispute. It is related in the singular, i.e. the husband can make it. The words of the author are true in two forms because when they do not mention the dowry, either they are explicit in that by proxy as when he says, "I marry you to my ward by proxy " or like "I have married you to my ward" without mentioning the dowry. In both cases the marriage is valid. If they make an explicit precondition that there is no dowry, then it is not permitted and it is invalid before consummation.]

32.10b. A dowry must be fixed

in which case the marriage cannot be consummated until the amount of the dowry has been fixed.

[Appropriate to her status on the day of the contract because it obliges inheritance and other fixed rights of marriage and entitles him to consummation, not by the contract nor by death. If one of them dies, they inherit from one another. There is no dowry except by stipulation. Some of them say it is affirmed by death, but that it is weak.]

32.10c. Acceptance of the dowry

If the stipulated dowry is appropriate to the status of the woman in question she must accept it. However if it is less than her due the choice is hers. If she does not want to accept it, the couple are separated.

[When the dowry is appropriate to her in the School, she must accept it. If it is less than the suitable dowry, as when he stipulates 50 dinars when a suitable dowry is 100, then she can choose. If she is satisfied and is sane and a non-virgin, she can make it binding as long as it is not less than a quarter of a dinar. If she is not pleased with it, then they are separated with a final divorce because it is before consummation.]

32.10d. When the dowry is suitable

If she is satisfied with it, or if the husband makes the amount to what is appropriate, then the marriage is binding on her.

[By adding more to what was stipulated when it did not reach a suitable dowry, and he allots her a proper amount after allotting less, then it is binding.]

32.11 Effects of Change of Religion

32.11a. If one of them leaves Islam

If either one of a married couple leaves Islam, their marriage is invalidated and they automatically become divorced,

[This is by a statement of disbelief or entering another religion. It becomes immediately invalid and there is a final divorce in the famous position, i.e. it is invalid by divorce. If the apostate becomes Muslim, then the marriage remains and there is no need for a contract nor taking

back because the tie still exists. If he is killed while an apostate, the spouse does not inherit. If someone who is not an adult apostasies, they agree that he is only killed after becoming adult and being asked to repent. Because one takes note of his apostasy, his slaughtered animal is not eaten and the prayer is not said over him.]

32.11b. Another opinion

although another opinion is that the marriage is invalidated but no actual divorce takes place.

[Another position is that the marriage is invalid without divorce, which is transmitted from Ibn Abi Uways and Ibn al-Majishun. They are compelled to abrogate it by the words of the Almighty," Do not hold to the bond of the unbelievers," (60:10) i.e. there should be not bond or marital connection between them.]

32.11c. When a couple become Muslim

If a non-muslim couple both become muslim their marriage remains valid.

[This is whether they are Kitabis or others if they become Muslim before or after consummation, whether the marriage was with a guardian and dowry or not. The marriage is valid as long as there is no impediment, like lineage or milk. If there is such an impediment then the marriage is invalid.]

32.11d. When only one person in a couple become Muslim

If one of the couple becomes a Muslim, the marriage is automatically invalidated, but no actual divorce takes place.

[This invalidation is without divorce in the famous position. They describe this question in its various forms. One of them is that the

husband is married to a Magian or the like who is not one of the People of the Book and he becomes Muslim and she does not soon after, i.e. within a month. If the time is not long between the two of them becoming Muslim, like a month, the marriage is confirmed whether it has been consummated or not.]

32.11e. When the wife becomes Muslim

If the woman becomes a muslim, her previous husband has the first claim on her if he becomes a muslim during her 'idda period.

[If she is a Kitabi or otherwise when the marriage has been consummated. This is true even if he divorces her in the 'idda, as the divorce of the unbeliever is not considered. If he becomes Muslim after the end of the 'idda, the marriage is not confirmed for her because his Islam is like the revocable divorce and there is not taking back after the end of the 'idda. If she becomes Muslim before her husband and the marriage has not been consummated, then their situation is clear.]

32.11f. When the man becomes Muslim

If the man becomes a Muslim and the woman is one of the People of the Book, their marriage remains valid.

[If he becomes Muslim before her and she is one of the People of the Book, the marriage is confirmed as long as there is no impediment to its continuance like lineage or suckling or if he married her in 'idda, whether his Islam was before consummation or not.]

32.11g. If the woman is a Magian

If the woman is a fire-worshipper (Magian) and becomes a Muslim straight after her husband, they remain married. If there is a delay in her accepting Islam, separation takes place.

[If he becomes Muslim immediately as long as there is no impediment. If she delays, they are separated. What the shaykh says differs to what is in the *Mukhtasar*, which is that if she becomes Muslims after her husband without it being a long time between their becoming Muslim, the marriage is confirmed. "Near" is defined as a month and the like.]

32.11h. Someone with more than four wives

If an idolater who has more than four wives becomes a Muslim he must select four of them and separate from the rest.

[Four of those he is permitted to marry in Islam before or after consummation, whether he had a multiple contract or several contracts with them, whether they are first or last, whether they become Muslim with him or he becomes Muslim and they are Kitabis. Choice is explicit. After the choice he is separated from the others without divorce. The point of the dispute is that if he becomes Muslim with ten wives he chooses four and separates from the rest.]

32.12 Various Impediments

32.12a. Divorce by Li'an

If someone divorces his wife by a curse (li'an) he can never marry her again.

[He adds in the *Muwatta'*, "If he denies himself, he is flogged with the hadd and the child connected to him, but he cannot take her back."]

32.12b. Marriage during 'idda

The same applies to a man who marries a woman during her 'idda period and consummates the marriage during it.

[No matter what kind of 'idda it is. We limit the 'idda to being for a revocable divorce because if he marries a finally divorced woman, and she is unlawful to the husband, it is abrogated and there is a hadd but she is not forever unlawful to him.]

32.12c. Marriage of slaves

It is not permitted for a slave or a slavegirl to marry unless their master gives permission.

32.12d. Women not making a marriage contract

It is not permitted for a woman, or a slave, or a non-Muslim to draw up a woman's marriage contract.

[Being male, free and Muslim are preconditions for the validity of the contract since the women is not permitted to undertake the contract for herself let alone another woman. The unbeliever has no authority over a Muslim woman although he does over an unbelieving woman and can marry her to a Muslim or unbeliever.]

32.12e. Marriage to make re-marriage possible

It is not permitted for a man to marry a woman in order to make it halal for her to remarry a man who has previously divorced her by a triple divorce,

[This is when the motive for marriage to make re-marriage lawful, or he has that intention along with the intention of keeping her if he likes her. What is considered is the intention at the time of the contract. If that intention occurs at the time of consummation here is no harm. This is based on the the words of the Prophet, "Shall I tell you about the borrowed billy-goat'?"They said, "Yes, Messenger of Allah." He said, "That is one who makes a woman lawful." Then he said, "Allah has

cursed the one who makes a woman lawful and the one for whom he makes her lawful." (ad-Daraqutni) He likens him to an animal and then he said that Allah cursed the two men for what they did in making her lawful for her ex-husband.]

and if such a marriage did take place it would not make a remarriage of this kind valid.

[That is because this type of marriage is void before and after consummation Some of them make a distinction between a final divorce with consummation and a suitable dowry. If the first marries her with this marriage, it is invalid without divorce and the husband, guardian, witnessses and wife are punished for carrying a marriage designed to make re-marriage lawful.]

32.12f. Ihram precludes marriage

A man in a state of ihram can neither get married himself nor draw up a marriage contract for someone else.

[Whether it is hajj or 'umra. This is because it is valid that the Prophet said, "The person in ihram does not marry or give in marriage nor propose." If there is marriage or giving in marriage, it is always invalid before consummation and so she receives nothing. If it is abrogated after it, she has the dowry because every woman with a consummated marriage receives dowry.]

32.13 SICKNESS

31.13a. Serious illness precludes marriage, but the dowry is paid from the third

It is not permitted for a man with a very serious illness to get married but if he does get married and consummates the marriage,

then his bride's dowry is the first thing to be paid from the third of his wealth he is permitted to leave as he wills.

[Or for a sick woman which may prove fatal. That is because he is restricted in respect of his property and it is connected to all who has a lien on it absolutely. It is clear that the marriage of a seriously ill person is not allowed, even if he needs a woman to look after him. It is like that in one of the two famous positions. The other position is that it is permissible on account of need. The marriage is void before and after consummation.

The preferred position is that it is nullified by divorce because there is disagreement on it. If it is not consummated, she has nothing. Ibn 'Umar said that the woman whose marriage is consummated receives a suitable dowry. It is the position of Ibn al-Qasim. Ibn Naji said that it is clear that she has the stipulated dowry, even if it is more than the dowry of a woman like her, from the capital, little or great.]

32.13b. Such a wife does not receive a fixed share

She does not receive the fixed share of his estate which would normally go to a wife.

[This comes from the prohibition by the Prophet against bringing in a new heir or removing one, and to act other contrary to its aim.]

32.13c. Divorce when ill

If such a man divorces a wife, that divorce is binding on him, but, if he dies from his illness, his wife still inherits from him.

[It is divorce because he is sane and responsible, whether the divorce is final or revocable. She does not inherit from him if the divorce is treble. She inherits from him if its revocable as long as the 'idda is not over. If

he recovers from his illness and falls ill again, she does not inherit from him because the restriction was removed by health.]

[This chapter is continued in the next page which deals with divorce, 'Dhihar'-repudiation, (ila') vows of celibacy within marriage, mutual cursing (li'an), 'Khul'-'divorce, and suckling)

(Continuation of Chapter 32)

DIVORCE, 'DHIHAR'-REPUDIATION, VOWS OF CELIBACY WITHIN MARRIAGE (ILA'), MUTUAL CURSING (LI'AN), 'KHUL'-'DIVORCE, AND SUCKLING

[The discussion on divorce begins. Linguistically it means releasing, from your words, "I released the camel," and it is a technical term for undoing the bond of marriage. It has four pillars:

1. Husband
2. Wife
3. Intention. If someone speaks of divorce without intention it does not occur, i.e. if someone wants to speak about something else and his tongue becomes tied and he utters divorce, that has no effect. It is the same when someone is forced to divorce: unless he uses a double-entendre with full knowledge.
4. The form, which is divided into the explicit, which has the expression "divorce" and it does not require an intention, and into allusion, which can be explicit or probable. If it is probable, then his claim about his intention and number is accepted. When, for instance, he says, "Go" or "Leave," and says that he did not intend divorce by that. He swears to that and owes nothing. If he says, "I intended divorce by that," it is binding. If he intended one or more

divorce, he acts by that. If he did not intend a number, three is obliged.

The shaykh divided divorce into two categories: innovated and sunna.]

32.14 Divorce

32.14a. Result of divorce

If anyone divorces his wife by a triple divorce she is no longer halal for him either by right of ownership or marriage until she has married another husband.

[Free or slave, Muslim or Kitabi, consummated or not. This is based on the Qur'anic ayat. What is meant by marriage by the shaykh and in the ayat is intercourse which is indicated by the words of the Prophet in the hadith about the wife of Rifa'a, "Not until you taste his sweetness and he tastes yours."

A precondition for the husband is that he is a Muslim. If he had been a Muslim married to a Jew or Christian and he divorces his wife three times and then she then marries a Jew or a Christian who then divorces her, she is not lawful for the Muslim to marry.

He must be an adult and maturity in intercourse is considered. If the contract is made before maturity and there is no consummation until he is an adult, then it is lawful. Intercourse during menstruation or 'idda is not considered, nor is the intercourse of the one who makes lawful without mutual aversion in it and that there be a customary being alone together which is confirmed by two women.

The seclusion must be confirmed, Otherwise, she is not lawful. Ashhab said, "even if the second confirms the intercourse because they are suspected of doing this to allow re-marriage to the one who divorced her.

" Intercourse with an unconscious woman or madwoman is not considered.]

32.14b. Triple divorce is an innovation

It is an innovation (bid'a) to divorce a wife by a triple divorce said on one occasion but if it happens it is nevertheless binding.

[The command is contrary to that even though it did occur in the time of the Prophet. Part of that is that he heard that a man had divorced his wife with three divorces together. He got up in anger and then said, "Do you play with the Book of Allah Almighty while I am among you?" However it is binding when it is done all at once.]

32.14c. Sunna divorce

A sunna divorce is acceptable, which is when a man divorces his wife by one pronouncement made while she is pure, having not had sexual intercourse with her since she became pure and does not make a second pronouncement until her 'idda period is over.

[A divorce allowed by the sunna which is permitted is is described. This has four rules. If one of them is missing it is not sunna.]

32.14d. When he can take her back

He can go back to her provided that she has not begun her third menstrual period since the pronouncement of divorce (assuming she has menstrual periods and is a free woman). If the wife is a slavegirl who has menstrual periods, he can go back to her provided she has not yet begun her second period.

[He can take her back because the marital ties continue between them except for intercourse. Taking her back is with the intention and the statement, like "I take her back," "I keep her," or things which take the

place of word like intercourse and foreplay, but there must be an intention with the intercourse. Intercourse without the intention is not taking back.]

32.14e. If the wife does not menstruate

If the wife has not yet begun to have menstrual periods or has ceased to have them, he can divorce her at any time he wants and the same applies to a woman who is pregnant.

[Various ages are given for the menopause. About "any time," at-Tata'i said, "It can even be after intercourse with her because such a divorce is in months which would not entail lengthening the 'idda. It is the same with the wife with whom the marriage has not been consummated, even during the time of her menstruation, since the reason for the prohibition is to avoid prolonging 'idda.]

32.14f. If the wife is pregnant

A man can go back to his pregnant wife up until the time she gives birth, in the same way that he can go back to a wife who is having periods before the end of her 'idda.

[He can take her back when the child is partially born. If it is completely born, then the 'idda is over and he cannot take her back. The 'idda ends by the miscarriage of a piece of flesh or a clot. If the matter is unclear, and it is not known whether it was the foetus or congealed blood, one considers the hot liquid. The 'idda of a woman with constant bleeding is a year: nine months are considered as freeing her and three are the 'idda. So the 'idda is actually three months. The 'idda of the post-menopausal woman is three months. There is no difference in the 'idda of months between the free woman and slave.

They disagree about whether "period" in the ayat means purity, as with us and ash-Shafi'i or menstruation with Abu Hanifa.]

32.14g. Divorce during menstruation

It is forbidden for a man to divorce his wife while she is menstruating but if he does do so it is valid, but he is compelled to take her back if her 'idda period has not finished.

[i.e. she is not pregnant. If he does, it is binding because Ibn 'Umar divorced his wife while she was menstruating and as 'Umar asked the Messenger of Allah about that and he said, "Tell him to take her back and then keep her until she is pure and then menstruates and then is pure. Then if he wishes he can keep her, or if he wishes he can divorce her before touching her. That is the 'idda which Allah has commanded for the divorce of women." The ruler commands him to take her back. If he refuses, he threatens him with prison. If he refuses, he is imprisoned. If he refuses he is beaten.]

[*Mukhtasar*: The same applies if he divorces her during lochia.]

32.14h. An unconsummated marriage

If a man has not yet consummated his marriage he can divorce his wife at any time.

[He is permitted to do this in the famous position since she has no 'idda, but Ashhab forbids it in menstruation because he considers the reason behind the ruling to be an act of worship.]

32.14i. Results of pronouncing divorce

One pronouncement of divorce ends the marriage and three makes her haram for him until she has been married to someone else.

[Without consummation because she has no 'idda. It is final. Three in one statement or what is like it is like the final or by repeating the expression one after another.]

32.14j. The statement, "You are divorced"

If a man says, "You are divorced," to his wife that is considered one pronouncement unless he intended more than that.

[It is a clear explicit statement, and counts, even if it is a joke. If he uses an indirect term ("You are free"), divorce is only obliged by intention because it is an allusion. If he intends more, it is binding.]

32.15 KHUL' DIVORCE

Khul' is a type of divorce which precludes any possibility of remarriage, even though it is not technically called a divorce, and it takes place when the husband accepts something from his wife in return for her release.

["It is a divorce" refutes the one who says that it is invalidation. Accordingly to the first, if he divorced her before, the khul' is two divorces and is she is only lawful after another marriage. According to the second, he can take her back before she married. The words "no possibility of remarriage" indicates the position of someone who thinks it is revocable and not final. He said, "not technically a divorce" indicates the one who says the khul' is not divorce even though it is called divorce.]

32.16 FORMULAS OF DIVORCE

If anyone says to his wife, "You are divorced once and for all," it is as if he had pronounced the triple divorce, regardless of whether the marriage has been consummated or not.

Similarly, if anyone says, "You are no longer my responsibility," or "You are on your own," or "You are haram for me," or "Your rein is on your hump" (i.e. you can go wherever you like) that is also considered as a triple divorce if the marriage has been consummated. If the marriage has not been consummated the husband is asked to specify what he intended.

(One takes note of custom in all this.)

32.17 Rights of Divorced Women

32.17a. Dowry in unconsummated marriages

When a woman who has been previously married is divorced before the marriage has been consummated she receives half her dowry unless she chooses of her own free will to forgo it. If she is a virgin the decision is left to her father and in the case of a slavegirl it is left to her master.

[Which has been named for her by the words of the Almighty "If you divorce them before you have touched them but have already allotted them a dowry, they should have half the amount you allotted, unless they forgo it," meaning non-virgin sane women, "or the one in charge of the marriage contract forgoes it.,"(2:237) which is the father in his virgin daughter and the master in his slavegirl. This applies when the divorce is final or revocable, and she is free or a Kitabi or a Muslim slave, consummated or not.]

32.17b. A gift from the husband to the divorced wife

When a man divorces his wife it is recommended for him to give her something by way of consolation although this is not obligatory.

[A gift according to his situation, wealthy or not. He is not compelled to do it, but it is recommended.]

31.17c. When the gift is not needed

If the marriage has not been consummated but the dowry has been paid, nothing need be given by way of consolation.

[She has no gift because she takes half of the dowry while her goods remain. It is understood that this is when she has no allotment, she has a gift, as we said.]

31.17d. In a khul' divorce

The same thing applies when a woman asks or a khul' divorce.

[Because she paid some of her property to separate from her husband, disliked or not.]

32.18 Right of Widows in a Tafwid Marriage

32.18a In an unconsummated tafwid marriage

If a man dies without having either paid over the dowry or consummated his marriage, his wife receives her share of his estate but does not receive any dowry.

[This is agreed because us the contract of marriage if sound, it makes inheritance between them sound. But she has no dowry in the famous position. What is understood is that it is the same if he has allotted her a dowry.]

32.18b. In a consummated tafwid marriage

If the marriage has been consummated she should receive a dowry appropriate for someone of her status if no particular amount has been agreed beforehand.

[When he has not allotted her any dowry. She also inherits. This is because her goods are sold and so she has a suitable dowry. This is when she is sane and it permitted to agree to less than a suitable dowry.]

32.19 Physical Grounds for Annulment

32.19a Physical grounds in respect of the bride

The marriage contract can be annulled if a bride is found to be mad or suffering from leprosy or a disease of the vagina. If the man consummates his marriage to such a woman in ignorance he must pay her her dowry and then claim it back from her father. The same applies if it was the bride's brother who acted as her marriage guardian.

[These are faults. A disease of the vagina is a blockage which prevents intercourse. There are various forms of this. It includes constant vaginal bleeds which prevent full intercourse. A bad smell from the vagina is another cause. If the marriage is consummated, then he pays her dowry and seeks it from the father.]

32.19b. A consequence of this

If the marriage guardian is not one of her close relatives, the man does not have to pay any previously agreed dowry, but instead the bride receives only a quarter of a dinar (i.e. the minimum possible dowry).

[If he is a cousin, and does not know about the fault and the marriage is consummated, he owes nothing. If he knows about the fault, then he is

liable for it like the relative. He does not have any comeback against the distant relative, but the woman only has a quarter of a dinar.]

32.19c. Impotence

An impotent man is allowed one year and if he is still not capable of having intercourse the marriage can be dissolved if the wife so wishes.

[If he has not had intercourse because the impediment preceded and followed the contract. If he has had intercourse, and then that impediment occurs and he manages intercourse there is no divorce. If he claims intercourse and she denies it, his statement is taken when he swears to it. If he refuses, she swears and her word is taken. This is if she wishes a final divorce because every divorce made by the qadi is final except in the case of someone who is unable to provide for his wife.]

32.20 A MISSING HUSBAND

32.20a. Period of Waiting

If a man disappears his wife should wait four years from the day she brings the matter to the notice of the appropriate authority.

[This is when he is missing in the land of Islam, and has no known place in a place of famine or wildness when he has a wife and she refers her business to the ruler to investigate his news for him. If he is free, then the period is four years. If he is a slave, it is two years. The time begins from when the case is presented to the authorities.]

32.20b. The 'idda after the waiting period

When this period of time has elapsed she should observe the same 'idda period as a woman whose husband has died. Then she may remarry if she wishes to.

[And she must observe mourning according to the famous position. After that she can marry and does not require the permission of the ruler to marry.]

32.20c. His inheritance

The wealth of such a man is not distributed as inheritance until such a time has passed that he could no longer be reasonably supposed to be alive.

[Generally this is the age of 80. The author and al-Qabisi choose it. 'Abdu'l-Wahhab chose 70.]

32.21 DURING THE 'IDDA PERIOD

A woman may not be asked for in marriage during her 'idda period although there is no harm in an indirect suggestion being made provided it is done in an acceptable way.

[No matter the reason for the 'idda. This means it is haram. When she is in 'idda not from divorce, it is not haram since it is not three. It is also unlawful to promise marriage from one of two sides so that she is certain of it. It is permissible to allude it so that an intention is known.]

32.22. NEWLY-WED

A man who marries a virgin can spend seven consecutive nights with her, overriding the rights of any other wives for that period. If the woman has previously been married the period is three nights.

[Young or old, Muslim, Kitabi or slave. After this period the division begins.]

32.23. Forbidden Degrees Among Slavegirls

If a man has two slavegirls who are sisters he may not have sexual intercourse with both of them. If, having had sexual intercourse with one of them, he desires to have sexual intercourse with the other, he must separate himself from the first, making her haram for himself, by either selling her or making an arrangement with her to buy her freedom (kitaba) or by setting her free or by any other means by which she would become haram for him.

[Or any other forms of sexual pleasure. If he owns both, he has intercourse with one but refrains from other. If he wants to have intercourse with the other, he must made the first unlawful for himself, either after the istibra' by selling her. If the sale is not final, like the sell with an option, the first woman is not unlawful to him until the end of the days of the option. Other possibilites are kitaba.]

32.23a. Consequences of intercourse

If a man has had sexual intercourse with one of his slave girls, her mother and daughters become haram for him and she also becomes haram for his father and sons as is the case in marriage.

[This is based on analogy.]

32.24. Divorce by a Slave, Minor or Wife

A slave can divorce without getting his master's permission. A child, however, cannot divorce.

32.24a Divorce by a wife

A woman whose husband has given her the authority to divorce or the option to do so as long as the two are in the same meeting.

[In the meeting she must clearly state her choice. The woman with authority may have authority for one or more divorce.]

32.24b. Sort of right of divorce

The husband may deny the right of other than a single divorce. If she has the option, it can only be a triple divorce and he does not have the night to deny it.

[Except for the the option. This cannot be denied whether the marriage is consummated or not.]

32.25. *ILA*': THE OATH OF ABSTINENCE

32.25a. Definition of the ila'

A man who swears not to have intercourse for more than four months is considered to have pronounced an ila'.

[This is whether the woman is Muslim, Kitabi or slave, intending harm by that. The period begins from the date of the oath, if it is explicit, or from the day of stopping, and the judgement is that it is an oath which applies to less than the term, like the "I will not have intercourse with you until Zayd comes," and if it four months or less, it is not an ila'.]

32.25b. When the ila' becomes effective

The divorce is only implemented after the end of the ila': which is four months if the man is free and two months if he is a slave. Then

the ruler gives him an ultimatum. If he resumes marital relations, then the ila' is cancelled.

[This is the famous position that there is no divorce until the end of the term of ila'. It is the famous position that the ruler gives him an ultimatum to resume relations or divorce. If he resumes, then the judgement of the 'ila' is removed by the words of the Almighty, "If they resume Allah is Ever-Forgiving, Merciful," (2:226) and resumption is achieved by the glans disappearing into the vagina. If he does not resume, then the ruler commands him to divorce. If he refuses, then the divorce is forced on him by the ruler.]

32.26 THE DHIHAR DIVORCE

32.26a. Expiation of the Dhihar

If someone pronounces a dhihar (a statement that sex with her is tantamount to incest) then he may not have intercourse with her until he expiates that by freeing a believing slave free of faults who is not partially owned by others or in the process of obtaining freedom. If he cannot do that, then he must fast two consecutive months. If he is unable to do that, he should feed sixty poor people two mudds each.

[Free or slave Muslim. He cannot have intercourse with her or kiss or touch her or look at her hair until he expiates for it. The months are lunar months which are counted by the moon. If he breaks it, he starts anew because it must be continuous. If he cannot do that, then he feeds free Muslims. The slave is not fed for expiation unless his master gives permission.]

32.26b. No intercourse until he done expiation

He may not have intercourse with her night or day until the end of the expiation. If does so, he must repent to Allah Almighty.

[However he does not have any other expiation.]

If he has intercourse after doing part of the expiation by feeding or fasting, he starts it over again.

32.26c. Slaves freed in expiation

There is no harm in freeing a one-eyed slave in the dhihar or a bastard. A child is sufficient, but we think it better to free someone who fasts and prays.

[Or any other slave. The Malikis think it better, as opposed to a nursing child. He should support the freed child until he is able to earn.]

32.27 THE *LI'AN* DIVORCE

32.27a. Definition of li'an

The li'an divorce between a couple is when the man denies paternity provided that he claims that he has been apart from her since her last menstrual period or by actually witnessing adultery, like a kohl stick in its case.

[The li'an is an allowance made by the Book and Sunna. There is no disagreement about it among the Imams. It takes place between a couple, even if their marriage is void, consummated or not, or rather they are iniquitous as Ibn al-Mawwaz states. If someone marries a relative or his sister unknowingly and she becomes pregnant and he denies the child, they curse each other because it appeared to be a marriage. If she

refuses, she receives the hadd. If he refuses, he receives the hadd for slander and the child is connected to him. It is a precondition that the husband be a legally responsible Muslim who can have intercourse. For the wife, there is a precondition that she be one who can become pregnant. Neither Islam nor freedom are preconditions. There can be a li'an from a Kitabi or slavegirl.

She must have menstruated, even once. A similar case is when he claims that he has not had intercourse with her after she had given birth previously this denied pregnancy. There must be a period between the two pregnancies which would make them separate: that is six months or more. Or it is actually witnessing adultery. A precondition for the li'an in denying paternity is immediacy. If he sees it and is silent and then takes a stand after that, there is no li'an. A precondition for the li'an is actual and not having intercourse with her afterwards. If there is a delay there is no li'an for adultery.]

32.27b. Li'an in slander

There is disagreement about whether li'an in the case of slander is allowed.

[Without the claim of seeing intercourse or denying peternaity in two famous positions, One is that he enacts the li'an and the other is that he receives the hadd and cannot enact the li'an.

Four rulings are connected to the li'an. He indicates one of them:]

32.27c. Li'an precludes premarriage

If they divorce by li'an, they can never remarry.

[The other three judgements is that there is no hadd punishment, paternity is denied and the marriage is ended. The separation between

them occurs when the li'an is finished. It does not require the judgement of a judge. It is abrogation, not divorce in the famous position.]

32.27d. How the husband carries out the li'an

The husband begins the li'an by testifying four times by Allah and then the fifth time he curses himself.

[In the li'an. To deny paternity, he says, "I testify by Allah that this child is not mine" four times. Al-Mawwaz said that it is what is in the *Mudawwana*. It is the well-known position that he says, "I testify by Allah that she has committed adultery." If saw her, he says, "I testify by Allah that I saw her commit adultery." The fifth time he says that the curse of Allah is on him if he is one of the liars.]

32.27e. How the woman carries it out

Then she does the same four times, and the fifth invokes Allah's anger, as Allah Almighty has mentioned (in the Qur'an 24:6-9).

[She denies the husband's oath, and when he states that he denies paternity and testifies by Allah that she commited adultery, she rejects that and says four times, "I testify by Allah that I have not committed fornication." When he says that he saw her and swears by Allah that he saw her fornicate, she refutes that and say four times, "He did not see me fornicate." The fifth time she invokes the anger of Allah on her if he is telling the truth.

Tbe li'an must take place in the presence of a group of people, with a minimum of four and be in the highest place in the land. It only takes place in the mosque. It is recommended that it be after the 'Asr prayer and it is recommended to alarm them both, particularly at the fifth oath and]to tell them. "This fifth oath will oblige the punishment for you."

32.27f. If the wife refuses to testify

If the wife refuses to testify, she is stoned if she is free and muhsana by intercourse with her husband or another husband. Otherwise, she receives a hundred lashes.

[This is after the husband's curse. There is half the punishment for a dhimmi.]

32.27g. If the husband refuses to testify

If the husband refuses to testify, he is flogged eighty lashes for slander and the child is considered to be his.

32.28 *KHUL'*

A woman may ransom herself from her husband by her dower or a sum more or less unless it is due to some injury to her. If there was an injury to her, she may reclaim what she gave him and the khul' is still binding. The khul' is a divorce which cannot be retracted except by a new marriage contracted of her own accord.

[She can do this if she is adult and sane and he is adult and sane. If he is a child or mad, she cannot do that. If it is due to an injury, like not paying maintenance nor making her do inappropriate work and the harm is established by evidence, and the woman has already obtained a khul' and then says it was only due to harm and presents the evidence for that, then the husband must return the payment to her and the khul' is a final divorce. They cannot marry again unless she has married again.]

32.39 DIVORCE OF SLAVES

A woman freed from slavery who married to a slave can choose between remaining married to him or separating from him. If someone buys his wife, then his marriage is void.

A slave is allowed only two divorces and the 'idda of a slavegirl consists of two menstrual periods. The expiations of the slave are the same as the free man except for the differences in the hudud punishments and divorce.

32.30 KINSHIP ESTABLISHED BY WET-NURSING

32.30a. This applies up to the age of two

Any milk which reaches the stomach of a nursing child in the first two years, even one suck, makes marriage unlawful.

[This is in accordance with the words of Allah, "and your mothers who nursed you." (4:23) It is applies, even if only on one occasion."

There are certain preconditions necessary to cause the legal consequences of suckling.]

32.30b. After the age of two

Nursing after the age of two years does not cause these prohibitions, unless it is close to it, like a month or so, or some say two months.

[After the age of two years, even if a lot of milk reaches his stomach, it does not create marriage barriers. This is based on the words of Allah, "Mothers shall suckle their children for two full years," (2:233) and His words, "his carrying and weaning is 30 months." (46:15) So He informs us about the minimum period of pregnancy and full period of nursing. A little over two years does not matter. Ibn 'Abdu'l-Hakam says a month and Ibn al-Qasim two months.]

32.30c. When the child is weaned before the age of two

If the child is weaned before the age of two so that it eats food without milk, any nursing which happens after that does not create these prohibitions.

[This is according to what is in at-Tirmidhi and an-Nasa'i report that the Prophet said, "Nursing does not create prohibitions except what splits the intestines," and that is before weaning. If a child eats food rather than milk, his intestines are opened.]

32.30d. Milk being poured into the mouth or nose

Nursing by pouring milk into the mouth or nose creates the same prohibitions.

[Even if it is not definite that it reached the stomach. That is what Ibn Habib reports from Malik. Ibn al-Qasim says that if it reaches the stomach, it creates prohibition but otherwise not.]

32.30e. Milk sisters

If a woman nurses a boy, her daughters and her husband's daughters, whether born before or after the boy, are his sisters. However the boy's brother may marry them.

CHAPTER 33: 'IDDA, ISTIBRA' AND MAINTENANCE

['Idda designates a woman waiting for a specific time determined by the Shari'a to see if she is pregnant. It is also a form of worship in itself. It is obligatory by the words of the Almighty, "until the book reaches its term" and because the Prophet said to al-Furay'a, "Wait in your house until the book reaches its term."

There are three types: menstrual periods, lunar months and pregnancy. Periods apply to the divorced woman who menstruates, free or slave.]

33.1 '*IDDA* FOR DIVORCED WOMEN

33.1a. Its length

The 'idda for a free woman is three periods, whether she is Muslim or kitabi. For a slave or partial slave, it is two periods. It does not matter whether the husband is free or a slave. A 'period' means the periods of purity between two menstruations.

[The ayat is general and this is not disputed. 'Idda has to do with the woman, not the husband. Divorce has to do with the men. A period is the period of purity. Abu Hanifa says it is menstrual periods.]

33.1b. If the woman is not menstruating

If the woman is not menstruating or has ceased menstruation, then it is three months for a free woman, free or slave.

[So she cannot be pregnant. It is three months. This is agreed. It is the same for the slavegirl in the famous position. This is calculated by the moon. When she is divorced during the month, the month in which is

which is divorced is completed from the fourth month. The day of divorce is not counted.]

33.1c. A woman with constant bleeding

The 'idda for a divorced woman with constant bleeding is one year, slave or free.

[That is nine months and third months,]

33.1d 'Idda for pregnant women

The 'idda for a pregnant woman who is widowed or divorced is when she gives birth, whether free or slave or kitabi.

[This is in the famous position in divorce and is agreed, even if it is a minute after the divorce or death. This applies to all by the words of the Almighty, "The term of those who are pregnant is when they lay down their burdens." (65:5) It is makes the general particular in "those of you who die and leave wives, they should wait by themselves for fourth months and ten days." (2:234) The limitation of it is is clarification. If she gives birth to twins, she is not lawful until she gives birth to the second.]

33.1e. No 'idda if the marriage has not been consummated.

A divorced woman whose marriage has not been consummated has no 'idda.

33.2 '*IDDA* FOR WIDOWS

The 'idda for a free woman who is widowed is four months and ten nights, whether a child or adult, consummated or not, Muslim or kitabi. For a slave girl who is partially free it is two months and five

days, except in the case of an older woman whose period is delayed. Then she waits until the doubt is removed. As for the one who does not menstruate because of youth or old age and her marriage was consummated, she cannot marry until three months after the death of the husband.

[This is a woman who is not pregnant, whether with false menstruation or not. It is the same whatever the age of the husband. Removal of doubt is by menstruation or the completion of nine months.]

33.3 MOURNING

Mourning for the woman in 'idda because of being widowed is that she not use any adornment in the form of jewellery, kohl or other things, and she avoids all dyed colours except black. She avoids all perfume. She does not use henna or perfumed oil nor comb perfumed substances into her hair. Mourning should be observed by the slave and free woman, child and adult. There is disagreement about a Kitabi. A divorced woman does not have to observe mourning.

[Ihdad is mourning. She avoids bracelets and similar things, and kohl, which would appear to be even if it was out of necessity, which it the position of Ibn 'Abdu'l-Hakam. In the *Mudawwana*, "She does not use kohl except for necessity." She removes dishevelment from her self. She does not enter the bath-house except by necessity and does not rub her body with depilatories. Black can be worn as the garment of sorrow. If it is an adornment among some people, she should avoid it. She avoids perfume and adornment because that invites marriage. Henna is adornment. Mourning is observed by all ages because in Abu Dawud the Prophet said, "The woman whose husband dies does not wear saffron or red garments, or jewellery or use henna." There is disagreement about a Kitabi with two famous positions about whether it is obligatory.]

33.4 THE 'IDDA FOR A JEWISH OR CHRISTIAN WOMAN AND UMM WALAD

A free Kitabi woman should be compelled to observe the 'idda for a Muslim husband who has died or divorced her. The 'idda of a umm walad after the death of her master is one menstrual period. It is the same when he frees her. If she does not menstruate, it is three months.

[Whether it is a single or final divorce because mourning is prescribed to protect lineage. The man has died and has no one to protect his lineage and so mourning becomes a barrier to defend the dead. The Kitabi is compelled whether the marriage has been consummated or not, even if she is a child or he is one.]

33.5 ISTIBRA'

Istibra' is observed in the case of a slavegirl who changes ownership. It is one menstruation. Ownership changes by selling, giving away, capture, or any other way. If the woman menstruates after being in the possession of the new master before he has bought her, then she does not have to observe an istibra' if she has not gone out. The istibra' for a child when she is sold is three months as it is for a woman who no longer menstruates. There is no istibra' for a woman who has never had intercourse.

If someone buys a pregnant woman from another person or gains possession of her without a sale, should not go near her or enjoy her in any manner until she gives birth.

[Omitted explanation)

33.7 LODGING AND MAINTENANCE OF DIVORCED WIVES

33.7a. Right to lodging and maintenance

A divorced woman whose marriage has been consummated has the right to lodging, but not maintenance unless she was divorced by less than three divorces or is pregnant. If pregnant, she has a right to maintenance whether it is one or three divorces.

[This is distinct from khul'. Any woman whose marriage has been consummated has the right to maintenance.]

33.7b. The position of a woman separated by a khul'

A woman with a khul' divorce has not right to maintenance unless she is pregnant.

[Any woman divorced by a final divorce is not entitled to maintenance unless she is pregnant.]

33.7c. A woman divorced by li'an

The woman divorce by a li'an has no maintenance, even if she is pregnant.

[Because the husband has denied paternity.]

3.7d. Widows

In the 'idda period on account of being widowed, she has no right to maintenance but to lodging if the house belonged to the decreased or he rented it.

[If the marriage was consummated.]

33.8 CONFINEMENT IN 'IDDA

When she is divorced or widowed, she should not leave her house until her 'idda is over unless the owner of the house evicts her and will not accept a normal rent. Then she leaves and stays in the place to which she moves until the end of the 'idda.

[She is not moved from her house unless it is a case of necessity. She is permitted to go out to see to her needs: what this refers to is moving house. She must spend the night in her house. She does not leave for hajj during this time.]

33.9 NURSING AND CUSTODY OF CHILDREN

33.9a. Nursing the child

The woman should nurse her child in the marriage unless someone of her status should not do so. A divorced woman can nurse the child for the father and she can take a fee for nursing if she she wishes.

[If she is married or has been divorced by a revocable divorce. In such a case she receives no fee. "A divorced woman" refers to a woman who is finally divorced or who has finished her 'idda. The right of nursing is a right in her favour, not one against her based on what is reported by Abu Dawud that the Prophet said to a woman whose husband had divorced her and wanted to take her child from her, "You are more entitled to the child than he is as long as you do not re-marry."]

33.9b. Custody

After a divorce, the woman has custody of a boy until he reaches puberty and a girl until she marries and the marriage consummated.

[This is the right of the mother, be she free or slave, Muslim, or Kitabi, sensible or foolish according to Ibn 'Arafa. This right also pertains if she is widowed. The girl's maintenance is owed by the father until her marriage is consummated.]

33.9c. Order of custody

After that if the mother dies or remarries, custody goes to the grandmother and then the maternal aunt. If there are no female relatives of the mother, then it goes to one of the sisters and paternal uncles. If there are none, then the agnate relatives.

[Custody goes first to the mother's mother and then the father's mother.]

33.10 Recipients of Maintenance

33.10a. The wife

A man is only responsible for the maintenance of his wife, whether she is rich or poor,

[A wealthy man is obliged to provide food, condiments, clothes and a dwelling once he has consummated the marriage or has been invited to do so while the woman is capable of intercourse. It does not matter whether she is wealthy or poor, Muslim or Kitabi, free or slave. A divorce can be imposed on him if he is unable to provide for him unless she knew of his inability in advance.]

33.10b. His poor parents

and his poor parents

[Who are free, whether they are Muslims or unbelievers and he acknowledges their poverty. If he denies that they are poor, they must

prove but are not required to make an oath. Making them take an oath would involve disrespect.]

33.10c. His children: sons

and to his young children who have no wealth. He is responsible for sons until they reach puberty if they have no crippling disability,

[This is free children, even if they are unbelievers. This means a disability which would prevent them from earning, as when they are insane or blind. Then the father is required to continue to support them.]

33.10d. His daughters

and for girls until they marry and their marriages are consummated.

[Or the husband, who is adult, has been invited to consummate the marriage. When her husband divorces her or dies, her father is not responsible for her maintenance if she is adult. If she is not adult, it reverts to him.]

33.10e. He is not responsible for other relatives

These are the only relatives whose maintenance he is responsible for.

[He is not responsible for grandparents or grandchildren]

33.10f. Providing the wife with servants

If he is wealthy enough, he should provide his wife with servants.

[This is an obligation when his wife is not someone who usually serves herself.]

33.11 BURIAL

33.11a. Burying slaves

He must also maintain his slaves and shroud them if they die.

[The obligation is from the words of the Prophet in the *Sahih*, "The best sadaqa is that given by the wealthy. The upper hand is better than the lower hand. Begin with your immediate dependents. The woman says, 'Either you feed me or release me, the slave says, 'Feed me and use me,' and the child says, 'Feed me until you let me go.'"]

33.11b. Shrouding the wife

Here is disagreement about shrouding the wife, Ibn al-Qasim said that it is done using her own money, and 'Abdu'l-Malik says that it comes from the husband's money. Sahnun said that if she is wealthy her money is used, and if she is poor, it is done from her husband's money,

[If she is wealthy her money is used and the husband is not obliged to pay it because shrouding is part of maintenance which ends with death. Otherwise the tie of marriage obliges that he do it since he can wash her and she her private parts and they inherit from one another.]

CHAPTER 34: SALES

This includes hire, partnership and all sale transactions, like cash sales and selling a debt, sound and invalid sales, the definition of the sale and transfer of goods. There are three essential elements of the sale:

1. The seller and the buyer, both of whom must possess discrimination and so a sale of a child or mad person is not valid, and possess legal responsibility, which is a precondition for the sale being binding. Islam is a precondition for buying a Qur'an or a Muslim slave.
2. The second is the price, which must be pure, consist of something which has a use, be something which can be handed over, known by both parties and something whose sale is not forbidden.
3. The third element is the form of the transaction which is the offer and acceptance, or that which indicates acceptance like customary behaviour in such matters.

The author begins the chapter with the words of Allah:

34.1 EXCHANGE OF MONEY

"***Allah has allowed trade and made usury unlawful.***" (2:274)

34.1a. Legal status of usury

[The *Sunna* and consensus make it unlawful. If someone states that usury is lawful, there is no disagreement that he is an unbeliever.]

34.1b. Usury in extending the terms of a debt

The usury practised in the *Jahiliyya* in debts was that when they were due, they were either paid or delayed in exchange for a payment of usury.

[In exchange for a delay, an increase was paid.]

34.1c. Usury in exchange

Besides usury in exchange for delay, usury also consists of selling silver for silver, hand to hand, in unequal amounts. The same applies in the case of gold for gold. Silver for silver and gold for gold are not permitted except like for like, hand to hand. Gold for silver is usury except hand to hand.

[The basis for the prohibition is that the Prophet, may Allah bless him and grant him peace, said, "Do not sell gold for gold, except like for like." The same applies to silver. "Hand to hand" means that the transaction is immediate.]

34.2 Exchanges Involving Foodstuffs

34.2a. Immediacy in the exchange of stored foodstuffs

The same applies to food grains, beans and similar foods or condiments which can be stored. It is not permitted to exchange one category of them for the same category except hand to hand like for like. It is not permitted for there to be a delay in this.

[This includes barley, millet, rice and all such grains. This would also apply to such condiments as vinegar and honey. The fact that a delay is not permissible is stressed when he says, "hand to hand" which means it must be immediate and direct. One considers likeness in terms of legal weighing or measurement. If no criterion has been transmitted from the Lawgiver about something, then one uses whatever the customary criterion is.]

34.2b. Delay not allowed in foodstuffs

It is not permitted to exchange food for food with a delay, whether in the same category or different categories, and whether that can be stored or not.

[This includes fruits like pomegranates and melons because a delay would entail usury.]

34.2c. Exchange of perishables

There is nothing wrong with exchanging fruits and vegetables which cannot stored in unequal amounts, even if they are of the same kind, provided it is hand to hand.

[Fruits which cannot be stored are like apricots and apples. Disparity is permitted in them, even if they are stored in rare cases in certain climates. This is like the case with pears, in which there can be disparity in the well-known position.]

It is not permitted to have a disparity in the same category of dried fruits and other condiments, food and drink which can be stored, except for water. There is nothing strong in exchanging different categories of other grains and fruit and foods in equal amounts from hand to hand. It is not permitted to have a disparity in the same category except in the case of fresh fruits and vegetables.

[If the items are usually storable, like walnuts and almonds, then disparity is not permitted. This is a weak position in the School. The well-known position is that disparity is permitted in then,

Disparity is forbidden in food drink and condiments, food like honey and vinegar. Disparity is permitted in water, but it is not permitted to sell it for food on credit according to the well-known position.

The allowance for disparity in fruit and vegetables is based on the sound hadith in which the Prophet, may Allah bless him and grant him peace, said "When the categories are different, then sell however you wish."

His final statement includes storable and unstorable, and this contradicts what he said before about storable fruits, but we already stated that the

well-known position is that disparity is allowed in them. The difference between the permission for fresh fruit and vegetables and its prohibition in the case of foodstuffs is that foodstuffs include that which can be stored and which is a major source of nourishment. Even if fruits and vegetables are stored at times, they are not a major food source.

Then he goes on to discuss those categories in which major disparity is not permitted.]

34.2d. Categories of foods in which there can be no disparity

Wheat, barley and sult-barley comprise one category in respect of lawfulness and or unlawfulness. All sorts of raisins comprise one category. All sorts of dates comprise one category. Beans have different categories in regard to sales. The position of Malik varies regarding this, but his position about them being one category for zakat purposes does not vary.

[Sult is huskless barley. There can be no disparity in the exchange of raisins or dates although they have different varieties. Ibn al-Qasim said that they have different categories while Ibn Wahb states that they are the same category. For zakat purposes, the *Mudawwana* states that they are a single category.]

34.2e. Meat

The meat of the quadrupeds and wild animals is considered to one category, the meat of all types of fowl is one category, and the flesh of all water creatures is one category. Fat falls into the category of the flesh from which it is extracted.

[Quadrupeds are: camels, cattle, sheep and goats. Wild animals include gazelles and wildebeests. The category of fowls includes both wild birds and domestic ones. The flesh of an animal cannot be sold for its fat

except like for like, hand to hand. The same applies to fish oil for fish: it can only be like for like, hand to hand.]

34.2f. Animal products

Yoghurt, cheese and butter are classified according to the category of the animals from which they are taken.

[This is one of the unclear areas of the *Risala* as to whether they can be sold one for the other. Malik and his people do not permit that. Al-Jazuli says that what is meant is that the types of milk are one category, cheese is one category and butter is one category, and they are to sold like for like without disparity.]

34.3 Selling Goods Not Yet In One's Possession

34.3a. Foods which cannot be sold before possession

Someone who buys food is not permitted to sell it before he takes possession of it, provided that the purchase was by weight, volume or number rather than unmeasured. That is the case for every food, condiment or drink except water.

[It is confirmed that the Prophet, may Allah bless him and grant him peace, forbade that. This general prohibition is then restricted to the categories mentioned. "Unmeasured" (*juzâf*) refers a sale without measure, weight or number. In such an (unmeasured) sale it is permitted to re-sell the goods before taking possession of them according to the well-known position because ownership is achieved by the contract. Therefore if it is destroyed before he takes possession of it, it is the buyer's liability. Water is excepted because it is not a food.]

34.3b. Medicines and non-oil crops

Medicines and crops which are not pressed for oil are not among the foods which it is forbidden to sell before taking possession of them or which cannot be exchanged for unequal amounts of the same category.

[Like honey which is compounded with other drugs and made into a medicine. Crops which are not pressed normally are like onion seeds, chard and white radish seeds, but not seeds like sesame and olives which are pressed for oil. It also includes things like onions, garlic, coriander, cumin, fennel and pepper. It is permitted to sell them before receiving them and disparity in amounts is also permitted.]

34.3c. Selling borrowed food before taking possession of it

There is nothing wrong with selling borrowed food before taking possession of it.

[It is permitted for the one who borrows to sell it before he has full possession of the loan, provided it is a cash sale. That is not permitted in a credit sale because if the borrower were to sell it on credit, that would invalid since it would be selling a debt for a debt.]

34.3d. Partnership, cost resale and revocation of sales are permitted

There is nothing wrong with partnership in buying, in cost resale, or in revocation of a sale before taking possession, in the case of food which is measured.

[There is nothing wrong with partnership in measured food stuffs before taking possession. That is when someone has a partner in some of it. There is nothing wrong in cost resale (*tawliya*), which is when he sells the commodity to someone for the same price he paid for it. There is

nothing wrong in revocation, which is when the buyer withdraws from the seller or vice versa.]

34.4 TRANSACTIONS WHICH ENTAIL RISK

34.4a. Contracts which entail risk are not permitted

Every sales contract, hire or lease which contains danger or risk in respect of the price, the item purchased or the term at which payment is due is not permitted. It is not permitted to sell something uncertain or to sell something unknown or to sell to an unknown term.

[Danger is when it is not certain that the commodity exists, as when someone says, "Sell me your horse in exchange for my profits tomorrow." Risk is when one is certain something exists but there are doubts about its soundness, as in selling fruits before they are ripe.

An example of what is forbidden when there is risk in the price is when someone buys goods in exchange for his stray camel. In regard to the purchased item it is like when someone buys a runaway slave. Risk in the term is when someone buys goods against the arrival of Zayd when he does not know when he will actually come.]

34.5 SELLING GOODS WITH HIDDEN DEFECTS

34.5a. Deceit is not permitted

In selling, it is not permitted to conceal faults or to adulterate things, nor to overrate or mislead, nor to conceal defects. It is not permitted to mix the bad with the good, nor to conceal something about the goods which, if known, would make the buyer dislike it or which would reduce the price if were known.

[Concealment (*tadlis*) is to know that there is a fault in the goods, but to conceal that from the buyer. Adulteration is to add something which is not part of the thing, like adding water to honey. Overrating is deceit by lying about the price as when someone says, "I bought it for twenty dinars and I will give you it to you for less!" Misleading is to gull with words as when the seller tells him, "Buy it from me and I will give you a reduction!"Nor is it permitted to mix poor wheat with good wheat.

It is not permitted to conceal defects which would put off the buyer, such as selling cloth which has been previously used as a shroud or by a leper. Something which would reduce the price is, for instance, if a new garment is impure or has been washed.]

34.5b. Defects in slaves

If someone buys a slave and finds a defect in him, he can keep him without any compensation, or return him and get his money back, unless the slave has acquired a new corrupting defect while in his possession. If this is the case, the new owner may claim back the amount of the original defect from the price he paid, or he can return the slave and pay the depreciation caused by the new defect.

If he returns a slave because of a defect and has put him to work to earn revenue while he was with him, he keeps the revenue.

[The same principle applies to buying slaves. The buyer has a choice between keeping the slave and returning him. If he keeps the slave, he receives nothing for the fault. He is allowed to return the slave because there might have been concealment (*tadlis*) in the sale. This principle applies to faults which can be concealed, not a fault it is impossible to conceal since it is evident, like blindness, or something which is necessarily hidden, like a nut which is found to be empty when opened. In such a case, there is nothing the buyer can say.

If the slave has acquired a new defect while in the possession of the buyer, it must be one which would seriously decrease his value.

If the buyer had the slave to work for him, he keeps the revenue from that work up until the time the deal is nullified, and he is not obliged to hand over any of that, since the Prophet, peace be upon him, said, "Income is with responsibility." One of them said that the meaning of that is the as long as the goods are the responsibility of the buyer, he is entitled to the revenue. When the sale is nullified, then the seller is entitled to the revenue.]

34.6 Selling Merchandise On Trial, A Slave With A Guarantee Or A Slave Girl In Seclusion

34.6a. Selling on trial (*khiyar*)

A sale with an option to cancel is permitted when the two parties stipulate a short period in which the buyer can test the goods or in which to seek advice. Immediate payment is not permitted in such a sale.

[One or both parties can make this stipulation. It is permitted because the Prophet, peace and blessings be upon him, said, "The buyer and seller have the option to withdraw as long as they have not parted." Malik transmitted that in the *Muwatta'* and stated that it was permitted. They can stipulate a short period which ends when the goods have been tested or until advice sought has been sought. The advice can be about the cheapness or dearness of the price, or about undertaking the purchase or sale. Testing can be about ascertaining the condition of the goods. That varies according to different goods. The option in the case of a riding animal is about three days, For slaves, it is about five days or a week in which to test his condition and work. There is about a month for a house]

34.6c. Slave with indemnification ('*uhda*)

Nor is immediate payment permitted in the case of a slave with a three day guarantee. (see 34:14)

[This is selling a slave provided that the seller has responsibility for any faults that come to light in the course of three days after the contract.]

34.6d. A slavegirl in seclusion (*muwâda'a*)

Nor is there immediate payment in the case of a slavegirl placed in seclusion to ascertain whether she is pregnant. The responsibility and maintenance in that period are that of the seller.

[Payment is also not made immediately when a slavegirl in seclusion is sold. It is when a valuable slavegirl or one with whom the seller has had intercourse is put in the keeping of a trustworthy man or woman until it is clear whether or not she is pregnant.

Payment in these three cases is suspended when cash is stipulated because sometimes it will become a sale and sometimes it is a loan, and so it is unclear whether the payment is an advance or a price.

The seller is responsible for the goods in these cases, and for maintenance of the slavegirl, as long as it is not evident that the buyer is lying. In such a case, he must take an oath, even he is not suspected.]

34.6e. When slavegirls are secluded

A slave girl is usually only secluded to see whether she is pregnant is when she is purchased to take to bed or when the seller states that he has had intercourse with her, even if she is ugly. The buyer cannot absolve the seller from the responsibility for the pregnancy unless it is clear and obvious. Absolving the seller of responsibility in things about the slave about which the seller has no knowledge is allowed.

[This seclusion is an obligation for two types of slavegirl to ascertain if the woman is pregnant. One is when the buyer wants her to sleep with, even if the seller does not admit to intercourse with her since the most likely case is that intercourse might have occurred, and so the most likely is given the standing of the definite out of caution in sexual matters. The second case is a slavegirl with whom he had has intercourse in case she might be pregnant.

If the slavegirl is valuable and the buyer has not had intercourse with her, and he says that he is not responsible for any pregnancy, the sale is invalid. If she is clearly pregnant, then he may stipulate that he is not responsible for her pregnancy. He limits it to "valuable" rather than ugly. It is absolutely permitted to stipulate that he is not responsible for the pregnancy of an ugly slavegirl, whether that is clear or not.

One may absolve himself in the case of slaves, but not other things. That is the well-known position. The permissibility of that is limited to two things. One is that the seller does not know about it. If he knows that there is a fault and disclaims responsibility for it, that does not help him. The second is that he has remained a long time with it. If, for instance, he buys a slave and then sells him soon afterwards, stipulating his lack of liability, that is of no use.]

34.6f. A mother may not be separated from her child

A mother and her child are not separated in a sale until the child has grown his second set of teeth.

[It is not permitted to separate them. This applies to children by lineage and applies whether they the mother and child are Muslims or unbelievers, or one is Muslim and the other an unbeliever since the Prophet, peace be upon him, made a general statement about that: "If someone separates a mother from her child, Allah will separate him from those he loves on the Day of Rising." (at-Tirmidhi, *hasan*). It is limited

to the mother by lineage, not the mother by suckling. It is permitted to separate them if the relationship is only one of suckling. It does not include other relatives besides the mother, like the father. It is permitted to sell them separately.

The prohibition against separation has a point at which it ends. The second teeth refers to when the milk teeth fall out. Then it is permitted to sell them separately because the child is independent from his mother in eating, drinking, and sleeping.]

34.7 Responsibility in an Invalid Sale

34.7a. Basic rule of responsibility for the goods

In an invalid sale, the seller remains responsible for the goods. But if the buyer has taken possession of them, he is responsible for them from the time he has them in his possession.

[An invalid sale would be like one conducted during the *adhan* for *Jumu'a*. The seller remains responsible because it is still his property and ownership has not been transferred to the buyer. If the buyer has taken possession of them, he is responsible because he has not taken them as a trust, but as a sort of quasi-ownership. That is the reason given by 'Abdu'l-Wahhab. Al-Fakhani stated there is some confusion in his reasoning, since it is obvious, as stated before, that there is no transfer in an invalid sale while there must be a transfer according to his argument. It is possible that he means that his taking possession is quasi-ownership is based on his claim. When he takes possession, thinking that he is taking ownership and then causes damage, he is responsible, even if ownership has not been transferred to him in reality. That is why he is liable. That applies from the moment he takes possession of the goods, not from the moment he makes the contract. If the contract had been sound, he would have been responsible from the moment the contract was concluded.]

34.7b. Consequences of buyer responsibility

So if the market price changes or the commodity is altered, then the buyer must pay its price on the day he bought it and does not return it. If, however, it is something sold by measure or weight, he must return its equivalent. Real estate is unaffected by market changes.

[The market price can rise or fall. If the commodity is altered and it is possible to assess its value, the buyer must pay that amount, whatever it is, even it is more than the original price, not the price on day of the judgement, and then he does not have to return the goods if they still exist. If it is something replaceable, which can be weighed, measured or counted, then he returns the equivalent. If it is impossible to return the like, then he must pay the price. An example of this is fresh dates when their time has passed. Then the price is assessed on the day he is unable to pay.

Real estate is not affected because usually land is bought for private use, and so a change in the price is not investigated, which is not the case with other things.]

34.8 Free Loans (*Salaf*)

[i.e. not a loan meant as an investment]

34.8a Illegal transactions in loans

It is not permitted to make a loan in exchange for some benefit [for the lender]. It is not permitted to combine a sale and a loan in a single transaction. The same applies if the loan is combined with hire or rental.

[That is because the Prophet, may Allah bless him and grant him peace, forbade that. That is like when someone has some poor quality wheat

and lends it to someone who takes it from him in exchange for repaying it with good wheat.

An example of the form of combining a sale and a loan is when two goods are sold for two dinars with a month's credit and then one of them is bought for a dinar in cash. So it is as if the seller has taken one item and a dinar in cash and at the end of the term, he takes two dinars: one in exchange for the goods, which is a sale, and the second in exchange for the dinar in cash, which is a loan.

Nor is is permitted to couple a loan with hire or rent as a precondition for making the loan, because hire or rent are a firn of sale and not a special quality in themselves. It is not permitted to make a loan a precondition of marriage, partnership, the qirad loan, musâqa or money changing.

To sum up, no contract entailing compensation can be combined with a loan.]

34.8b. What can be lent

A loan is permitted in everything except slave girls or silver ore.

[A loan (*salaf*) means giving something with the intention of pleasing Allah so that the borrower can use it and then return its equivalent. It is permitted, i.e. recommended, in items which will be useful for the borrower and relieve his difficulties. It can also become obligatory or forbidden in certain cases. It is allowed in everything which it is lawful to own, even if it is not valid to sell it, and thus includes the tanned skin of carrion and the meat of sacrifices.

Slavegirls are an exception to this because that would lead to lending sexual favours, although a loan of a slavegirl can be made to a woman or to a child who is of an age where he cannot have intercourse. That is permitted as stated by al-Lakhmi and others.

34.9 SURRENDERING BORROWED OR SOLD PROPERTY

34.9a. No reductions or increases allowed for a change in the collection date

A reduction in the debt is not permitted in order to hasten its collection nor can it be delayed in exchange for an increase in the amount due.

[This is according to the well-known position. The *fuqaha'* call this case "putting down and expediting". Its form is that one man owes a debt to another which is due at a certain time, like a hundred dirhams with a month's credit. The one owed the debt tells him, "Give me the fifty now and I will reduce it by fifty for you." This is forbidden because whoever moves up a thing before it is obliged becomes a borrower. So it is as if the payer is lending the one owed the money fifty dirhams in exchange for his responsibility when the 100 are due. So it is a loan in exchange for an increase. If that occurs, what he took from him is returned to him. When the term comes, the lender takes all that he was first due, which is 100.

The same applies to delaying the debt in exchange for an increase, as happened in the *Jahiliyya* because that is borrowing for an increase. When the time for repayment comes, the person who owes the debt says, "Give me a delay and I will give you more than you are owed."]

34.9b. Not granting an increase in return for earlier possession

Goods are not collected sooner in exchange for increase in them when there is a sale involved.

[That is part of getting rid of responsibility for the goods. An example of a case in which you are given an increase is when you buying a hundred garments of known description from a man and he tells you,

"Take your garments," and you reply, "I will leave them with you. I have no need of them now." He says, "Take them away and I will give you five more." That five is in return for cancelling his responsibility for them.]

34.9c. Returning borrowed goods before they are due

There is no harm in returning a loan early with an increase which is only in the quality.

[There are two preconditions here. One is that the goods are part of a loan and the second is that the increase is only in the quality. For instance, if the borrowed garment is one of poor quality, he says, "I will give you better than it if I return it early.]

34.9d. Returning a loan with an increase

There is disagreement about when someone repays a trade loan (qard) with an additional amount at the time of repayment when there was no stipulation, promise or custom to do so. Ashhab allowed that, but Ibn al-Qasim disliked it and did not allow it.

["At the time of repayment due (lit. meeting of settlement)" is the moment in which it is paid, whether that is before or after the agreed term. A stipulation about this would be, for example, when the lender says, "I will not lend to you unless you give me more than I lent you." A custom refers to the borrower who normally gives more when he repays. The reason for allowing it is that the Prophet, may Allah bless him and grant him peace, said, "The best of people is the one who is the best in payment, and the best of you is the one who is the best repayment," as Ibn 'Umar said. The literal words of the author would mean that Ashhab allowed it absolutely, whether a little or a lot of increase. What Ashhab actually allowed is a small increase like a dinar in a hundred and one ardeb in a 100. It is possible that Ashhab's position applies both to a little

and a lot. Ibn al-Qasim disliked doing that with a prohibitive dislike in the well-known position.]

34.9e. Payment before the loan is due

If someone owes dinars or dirhams as the result of a sale or a loan which has a set term, he can pay them before they are due. He can also hand over goods or food from a loan early, but not when it is because of a sale.

[That is because the term is his right. If he forgoes his right, then the lender must accept it and is compelled to do so. This is the same for a loan or a debt. He cannot be compelled to accept it in the case of in a sale or an advance because they both have a right in that case. A seller is not compelled to accept early payment, even if it is only a day or two.]

34.10. Risky Things Which May Not Be Sold

34.10a. Not selling fruits or grain before they are ripe

It is not permitted to sell fruits or grain whose ripeness has not appeared, but it is permitted to sell them when the ripeness of some of them has appeared, even if that is on one palm tree among many.

[This refers to fruit on trees, like dates and grapes while they are still green, or grain which has not developed, like wheat and broad beans. It is not permitted because there is no legal use in the sale before ripeness appears. The appearance of the ripeness of dates is when they turn red or yellow. Its appearance in crops like grapes is when sweetness appears. The appearance in grain is that it is dry. Any contract formed before that is void.

It is permitted to sell fruits when some of them are ripe, even one palm tree as long it is not a *bakura*, which is a tree which ripens well before the others so that the goodness of the others does not immediately follow

it. It is not permitted to sell a garden on the basis of the soundness of the fruit of such a tree, but the fruits of that tree on its own can be sold.]

34.10b. Not selling things which one does not have

It is not permitted to sell fish which are still in rivers or pools, nor can one sell a foetus still in its mother's womb, nor the foetus of what is in the wombs of other animals. It is not permitted to sell the offspring of unborn camels nor to sell the sperm of male camels nor to sell a runaway slave or stray camel.

[The prohibition about fish is based on what Ahmad transmitted about the Prophet, may Allah bless him and grant him peace, forbidding buying fish still in water, i.e. due to uncertainty, and the uncertainty in it has two aspects. One is the lack of the ability to hand the fish over, and the fish might be little or large.

It is also not permitted to sell a foetus, human or animal, because of the uncertainty since one does not know whether it will be born alive or dead, fully formed or not fully formed, male or female.

It is not permitted to sell the offspring of unborn camels, and that is because the Prophet, may Allah bless him and grant him peace, forbade such a sale, which is called *habal al-habala*. Ibn Wahb explained it as the offspring of a camel's offspring. It cannot be concealed that this entails great uncertainty. If it is forbidden to sell what is in the womb, how can one sell the future offspring of what is in the womb!

It is not permitted to sell the sperm of camels since it is confirmed that the Prophet, may Allah bless him and grant him peace, forbade selling the stud uses of a camel. Ibn Naji said, "If that is limited to a number of times or a period of time, then it is permitted. Ibn Habib related that it is disliked because of its prohibition.

A runaway slave is not to be sold while he is on the run because of the forbidden uncertainty. If he is resident or it is clear that he is no longer on the run, then it is permitted, i.e. when a time is stipulated as, for example, when he says, "The end of his being on the run is four days." Or it can be limited by place, as he says, "His being on the run will end at Alexandria." The same ruling applies to stray camels because of the uncertainly about the ability to get hold of them.]

34.11 Dogs

34.11a It is not permitted to sell dogs

Selling dogs is forbidden. There is disagreement about whether one can sell those dogs which are permitted to be kept.

[The prohibition derives from what is reported in Muslim where the Prophet, may Allah bless him and grant him peace, forbade the proceeds from the sale of dogs, money earned through prostitution and the earnings of a soothsayer. The disagreement is about dogs which are used as guard dogs and for hunting. There are two well-positions about whether that is permitted or prohibited.]

34.11b. Liability for killing dogs

If someone kills such a dog, he is liable for its price.

[If someone kills a dog it is permitted to keep, he must pay the price according to the position that it is permitted to sell it. As for dogs not permitted to be kept, there is no price for such a dog.]

34.12 *Muzâbana* Exchange

[A sale of something which entails dealing with something whose weight, measure or number is unknown.]

34.12a. It is not permitted to sell meat for a live animal

It is not permitted to sell meat for a live animal of the same species.

[That is because the Prophet, may Allah bless him and grant him peace, forbade that and because it is selling something known for something unknown, which is one meaning of *muzâbana*. Malik considers the prohibition to be specific to meat in exchange for a live animal of the same type, as the shaykh indicates here. The species in this case means the linguistic category for the type and the class, like selling beef, for instance, for sheep. In the *Mukhtasar*, the prohibition is limited to meat which has not been cooked. Otherwise it is permitted, as it is permitted to sell it for other than its species, like selling mutton for birds.]

34.12b. Combing two sales in the same contract not permitted

It is not permitted to have two sales in the same contract. That is when someone can buys goods for either five in cash or ten on credit, and the sale becomes binding after one of the two prices is paid.

[It is confirmed the that Prophet, may Allah bless him and grant him peace, forbade that. There are two forms of that. One is when someone buys the same goods for two prices. The shaykh indicated that here, which is either paying five in cash or ten on credit and the sale becomes binding once one price is paid. He used the price to designate the sale as the price is one of the essential elements of the sale. The second form is to sell two different commodities for one price, like a garment and a sheep, as a requirement of the sale. The precondition for its being forbidden is because that becomes binding for one or both parties and because of the uncertainty entailed since the seller does not know the price he was paid nor the seller what he paid. If it is not binding, then it is permitted.]

34.12c. Not selling dried fruits for fresh ones

It is not permitted to sell dried dates for fresh ones, nor raisins for grapes, whether for disparate amounts or equal amounts, nor any type of fresh fruit for the dried fruit of the same type. This is *muzâbana* which is forbidden.

[This cannot be done, either in similar or disparate amounts, since it is confirmed that the Prophet, may Allah bless him and grant him peace, was asked about selling dried dates for fresh ones and he, may Allah bless him and grant him peace, asked, "Do dried dates reduce in size when they are dried?" "Yes," they replied. He said, "Then no." Malik said, "They are not sold." Abu Hanifa said that there is no harm in that.

It is also not permitted to sell raisins for grapes in disparate or equal amounts because there can be no equivalence in them, because when dried, the fresh may be more than the dried, or less or the same. This is uncertainty and lack of knowledge of actual equivalence, and is tantamount to actual disparity. Disparity is not permitted because they are the same category. This applies to any sort of fresh fruit in exchange for dried. This would include grains and any fruits which differ when they fresh from how they are when dried. He excludes different types because disparity is permitted when the two are different types.

Muzâbana is forbidden, which here is selling something known for something unknown of the same type. We consider *muzâbana* to be confined to things susceptible to usury, even if the hadith which explains it uses something which is susceptible to usury.]

34.12d. Not selling undetermined quantity for a determined quantity

One does not sell an undetermined amount for a measured amount of the same commodity, nor an undetermined amount for an undetermined amount of the same category unless the difference

between the two is clear and it is something in which disparity in the same category is permitted.

[This is like selling a heap of wheat whose measure is unknown for a heap of wheat whose measure is unknown since it is *muzâbana* when it is the same category. When the two categories are different, that is permitted provided it is obvious, i.e. the two categories are clearly different, be it selling an unknown for a known or vice versa, whether or not the difference is evident. When it is clear that there is difference between the measured quantity and the unmeasured, or the unmeasured and the unmeasured, it is permitted to sell them if they are a category in which disparity is permitted. This cannot be done with something which is storable and a stable food, nor with gold or silver.]

34.13 Selling Absent Goods

34.13a. Absent goods can be sold based on their description

There is nothing wrong with selling an absent article based on its description. Pre-payment is not to be stipulated unless its location is close or it is something safe from change, like a house, land or a tree. Pre-payment can be made for these.

[This is according to Malik and his people, with certain preconditions. One is that the item is described. Ibn Naji said that the apparent meaning of his words is that if it is sold without a description and it not been seen, then it is not allowed. If it is, he has an option to cancel when he sees it. That is what is stated in the chapter on uncertainty in the *Mudawwana*.

The second precondition is that someone other than the seller describes it because the seller is not reliable in his description since he intends to augment its description so that the goods will sell. The precondition for its being described by other than the seller is when there is prepayment,

even voluntarily. Otherwise, the description of the seller is accepted as probable.

The third precondition is that the goods are not very far away. This is a precondition if the sale is definite. If there is an option to cancel, it is permitted because there is no harm to the buyer.

The fourth is that pre-payment is not stipulated. It is forbidden because it is not possible to hand over the goods so that he pays the price but does not receive the goods and thus it becomes a loan.]

34.13b. Exceptions to forbidding prepayment

[He makes two exceptions to forbidding obliging pre-payment. One is when the absent goods are near to the place, whether it is animals, commodities or immovable property, like a day or two. The second exception is when the sale concerns one of the categories mentioned. It is something which is safe from sudden change, unlike the situation with animals. It is not permitted to make a precondition for prepayment of categories subject to change when they are located far away.]

34.14 Slaves Sold With An Indemnification

34.14a. Indemnification ('*uhda*) is permitted in slaves

A guarantee is permitted in selling a slave when that is stipulated or it is the local custom. In the three day guarantee the seller is completely responsible for defects in that slave, and in a year's guarantee, he is only responsible for insanity or either type of leprosy.

[An '*uhda* is a contract in which responsibility for the goods remains that of the seller after the contract for a certain period. It is permitted in the case of slaves but not animals because a slave has the ability to conceal his defects, which is not the case with other commodities, and

he may be concealing a defect which the buyer will dislike, and its concealment may be due to harm or dislike in the seller. The period of indemnification is set when it is stipulated in the contract or when the ruler obliges people to do that. If none of this exists, then it is not set.

For three days the seller is responsible for everything, even death, drowning, burning or suicide. If the buyer finds an illness within the three days, he can return the slave without evidence. If that occurs after three days, he must produce evidence that the slave had that illness when he purchased him. The buyer is responsible for the feeding and clothing of the slave in this period and any revenue he earns in that period belongs to the buyer.

In the year's guarantee, the seller is only liable for three things. One is insanity, which is by jinn possession or nature, not due to a blow or rapture. He is not returned since it is possible to cure that by treatment which differs from the first two cases. The other two things are the two forms of leprosy (whitening and that which involves mutilation). The contract is specific to these diseases. That is because their causes can exist while they only manifest themselves at certain times of the year, as is the custom of Allah in the effect of that cause in that season. So the four seasons must be passed through, which is a full year, to show that he is clear of these defects.]

34.15 Sale with Advance Payment (*salam*)

34.15a Advance payment is permitted

There is nothing wrong in advance payment (*salam*) for goods, slaves, animals, food and condiments, provided the goods have a known description and there is a set term of delivery. The price is to be paid immediately, or with a short delay of something like two or three days, if that is stipulated in the contract.

[This is also called *salaf*, and it is a term used to designate a type of sale in which what is purchased is not collected immediately. Its reality is that the price is advanced and delivery of the goods purchased delayed. The Book, Sunna and consensus indicate that it is allowed. The evidence in the Book is the words of Allah Almighty*, "Allah has permitted trade*." (2:274) As for the Sunna, it is reported in the two *Sahih* Collections that the Messenger of Allah, may Allah bless him and grant him peace, said, 'When anyone pays in advance for something, it must be for a specified measure and specified weight for a specified term." The Community agree that it is permitted.

It is allowed in the commodities he mentioned provided the goods for which the advance is paid have a known category, amount and quality as he indicated. If the purchase is food, then its type must be specified, either wheat, barley, or millet, or if it is fruit, it is specified, whether raisins or dates. The amount is specified by whatever is the custom in measure, weight, number or length or whatever. The description must be specific. If it is food, he mentions what describes it. If is an animal, then the species is mentioned, its colour, and whether it is male or female.

Two things are considered about the term. It is must be known and it is a length of time in which market prices can change. Its minimum is half a month. It is not valid to give an advance for immediately delivery according to what is common in the school.]

34.15b. Preconditions of the payment

[He indicates preconditions of the payment, and that he must pay the entire price because when he pays some and delays some, it is invalid because it is a debt for a debt. There can be a short delay of a day or two if it is not stipulated that he pay cash when the contract is made. It is permitted for the advance to be paid after two or three days. That is still considered immediate payment, and he mentions this specifically. His

words would mean that if it is longer than that, such a precondition is not allowed.]

34.15c. Delivery of the goods paid for in advance

We prefer for the delivery of the goods paid for by advance to be fifteen days, or for it to be collected from another town, even if that is two or three days distant. According to more than one scholar, it is permitted to pay three days in advance and collect it in the same town in which the advance was paid. Others dislike that.

[That is because the market generally changes in such a period. It is clear that it is about that. That is like when he says, "We prefer for the length of the advance to be up to fifteen days." The school of Malik is the term of the advance is that in which something like it will change its price in markets without that being specifically defined. The subject of the disagreement is when the price of the advance is paid when the goods for which the advance is paid are in the same town. If each of them are in different towns, the term mentioned is not a precondition, as he indicated.

If the goods are in another town other than where the advance is paid, the distance between the two is the term for the advance, because usually there is a difference of prices in different places. It does not matter if it is only half a day.

Some scholars, including Malik, allow the advance in the same town, while others, like Ibn al-Qasim, dislike it.]

34.15d. An advance cannot be with the same type of goods

It is not permitted for the payment to consist of the same type of goods as that for which the advance payment is made. No advance is made of the same type or similar type of goods unless he lends him

something to be repaid with something of the same quality and quantity, and the borrower enjoys the benefit.

[This is when the goods for which the advance is made are more than the payment, like one qintar of iron for two qintars because the object of an advance is to bring about a benefit. The same holds when it is less, like two garments for one garment of the same type because it is a liability in exchange for a wage. When the payment for the advance is similar to the goods in description and amount, it is permitted, as he states here, like donkeys for asses, or linen slaves for cotton slave because their uses are close.

An exception to the prohibition against advancing a thing of the same type is a loan which is repaid with its like. The borrower enjoys the use, but it is not permitted for the lender to be the one who benefits.]

34.16. EXCHANGE OF DEBTS

34.16a. It is not permitted to sell a debt for a debt.

It is not permitted to sell a debt for a debt.

[It is related that the Prophet, may Allah bless him and grant him peace, forbade selling an outstanding debt for an outstanding debt. The people of language say that that means a delayed payment for a delayed payment, meaning a debt in exchange for a debt. According to the fuqaha', it denotes three things: selling a debt for a debt, contracting a debt in exchange for a debt, and abrogating one debt by another debt. So the expression, "selling a debt for a debt" has two applications which includes three forms.]

34.16b. A forbidden aspect

One form of that is to stipulate delay of payment for the *salam* sale until the goods are delivered, or to delay payment more than three days after the contract.

[Payment of the *salam* cannot be set for more than three days after the contract. It is part of "a debt for a debt" because it prolongs the responsibilities of both.]

34.16c. Not cancelling one debt by another debt

Nor is it permitted to cancel one debt by another debt. That is when someone owes you something and you cancel it by allowing him to pay you something else at a latter date.

[An example of this is that he owes you ten dinars on a year's credit. Then cancel it for ten garments, for instance. If the cancellation is at the term or shorter than it, there are two positions. One is that is permitted, which appears to be most logical. It is also said that it is forbidden, and that is the better known position.]

34.17. SALE OF GOODS ONE DOES NOT HAVE

It is not permitted to sell something which you do not have if it is stipulated that you must deliver it immediately.

[If it is clear that if he wants immediate delivery. This is when he sells something for which he is responsible and does not have and so he must go to the market and buy it and then hand it over to the buyer. This entails risk and uncertainty, because he may or may not find it, and if he does find it, he will buy it for more than the price for which he sold and must make up the price himself, and is forbidden foolishness, or he buys it for less and consumes the rest falsely, which is not permitted.]

34.18 Reversal Of Sale On Time

When you sell some goods to be paid for later, you may not buy them back by paying in cash less than you sold it for or by taking a shorter term to pay for it than the term given to the original buyer, nor can you pay more for it or take a longer term to pay for it than the original term. It is permitted to buy it at the original date, and that is fair exchange (*muqassa*).

[The sale in the first example is when he sells a garment for ten dirhams for a month and then buys it for five in cash. The example of the second is that he sells it to him for a 100 for a month and then buys it for fifty for 15 days. Both cases are forbidden because they entail a loan in exchange for an increase because he pays a little in order to take more than it.

Another case is when you sell goods for a price on credit. You cannot then buy them back for more than the price, as when a man sells goods for a 100 for a month and then buys them for 150 for two months because that entails a debt for a debt. If you sell goods for a price on credit and then buy them for a price on credit for the same term, that is permitted whether the price is more or less or the same, because there is no reason to be on guard. Fair exchange is when you see goods for a 100 for a month and then buy it for 100 on credit. This is responsibility for 100. So at the end there is a 100 for 100.]

34.19 Buying In Undetermined Amounts (*Juzâf*)

34.19a It is permitted to buy in unmeasured amounts

There is nothing wrong in buying undetermined amounts of things which can be measured or weighed, except for dinars and dirhams which are minted. It is, however, permitted in the case of pieces of gold and silver.

["Undetermined" means not weighed, measured or counted. "Nothing wrong" means it is permitted. In the *Sahih* we read that the Companions, may Allah be pleased with all them, sold fruits in undetermined amounts. It is, however, forbidden to sell minted dinars and dirhams in undetermined amounts because that is part of what contains risk and gambling. It is permitted with pieces of gold and silver unless they are used for currency. When they are used as currency, then it is not permitted to do that.]

34.19b. Things which can be easily counted are not sold uncounted

It is not permitted to buy slaves and garments in undetermined amounts, nor other things which can be counted without difficuty.

[This would also be like two gardens. It is easy to count small numbers.]

34.20. Right To The Accessories Of Items Sold

34.20a. Pollinated palms and crops

If someone sells date palms after they have been pollinated, the fruit belongs to the seller unless the buyer stipulates that is part of the sale. It is the same with other types of fruit. Pollinating (*ibâr*) is using the male blossoms to pollinate the female, but in respect of crops, it means when they spout from the soil.

[This is when all or most trees have been pollinated. The fruit still belongs to the seller unless it is part of the contract. This is a general principle which applies to all sorts of fruit, like grapes and olives. Pollination of palms means to put pollen on the fruit from the male palm tree. In other than palms, like peaches and figs, it is when the fruits begin to grow so that they can be seen. The well-known position about crops is

that it is when they start to emerge. So if someone buys sowed land in which has not yet appeared, he obtains the seeds in it.]

34.20b. A slave's possessions

If someone sells a slave who owns some property, that property belongs to the seller, unless the buyer stipulates otherwise.

[He stipulates it for the slave, not for himself. If he stipulates it for himself, that it is forbidden if the price was gold or silver, and the property is gold or silver.]

34.21. Examining Items

34.21a Buying items unseen but described

There is nothing wrong in buying what is bags with a known description on rosters.

[This is permitted. Even though the basis is forbidden, it is permitted because of the difficulty and hardship entailed for the seller in untying the bags which may sully what is in itself and be a great burden if the buyer is not satisfied. So the description takes the place of actual seeing. What is meant by rosters is a written description. If he finds the contents to be what is on the roster, then the sale is binding and the buyer has no option to cancel. If he finds that the contents are different, he has an option to make the sale binding or cancel it.]

34.33b. What one cannot buy without seeing it

It is not permitted, however, to buy cloth which is not unfolded nor described nor to buy if it is a dark night when the buyer and seller cannot see it or know what is in it. The same holds for buying an animal on a dark night.

[Literally it would mean that if it is described, it is permitted. The well-known position is that it is not permitted because there is no hardship involved in bringing it out and unfolding it. His words might also give rise to the impression that if it is a moonlit night, it permitted. According to the *Mudawwana* it is absolutely not permitted, whether it is a dark or moonlit night.

Ibn al-Qasim also says that about selling flock animals. Ashhab makes a distinction about that whose meat is eaten, which can be sold since it possible to test it at night by touching it with the hand to clarify the aim of it being fat or lean.]

34.22 BIDDING

34.22a. No bidding when a sale is about to be concluded

No one should bid against his brother's bid when the two parties are satisfied and near to closing a deal, but he can do so at the beginning of the bidding.

A sale is finalised verbally, even if the two parties have not physically separated.

[It is forbidden when the buyer and seller are close to agreement and only the finalisation remains. At-Tata'i said that bidding in sales to seeking to increase the price.

We believe that sales are concluded by a verbal agreement, or what indicates it, like a gesture or handing over, even if they have not separated. The hadith says that the Prophet, may Allah bless him and grant him peace, said, "The buyer and seller have the option as long as they have not separated." Imam Malik takes the separation to be by words.]

Then he begins to discuss transactions which resemble sales.

34.23. HIRING SERVICES BY TIME, PIECE-WORK AND RENTING

34.23a. Hiring services is permitted

Hiring services (*ijâra*) is permitted when the two parties set the length of time and the payment.

[In a hadith, we read that the Prophet, may Allah bless him and grant him peace, said, "I will be the antagonist of three people on the Day of Rising: a man who makes a covenant in My name and then betrays it, a man who sells a free man and then consumes the money he gets for him, and a man who hires an employee and gets full work from him and then does not pay him his wages." This hadith is in the two *Sahih* Collections. The apparent meaning of the words is that there must be a term set for every employment, but that is not the case when the types of employment do not need a term. It is work whose end is when it is finished, like sewing and weaving. Naming the payment is necessary, as Ibn Naji said. When it is not named, that is not allowed unless it is something common which does not vary, and then it is permitted.

34.23b. Piece-work jobs

No term is fixed in a contract to recover a runaway slave or a lost camel, or to dig a well, to sell a garment or similar things. He receives nothing until the work is complete.

[It is not set because that would increase the uncertainty about wage since the term pay pass before the work is complete and so his work will be for nothing, or he make take what he is not entitled to if the work is complete before the end of the term. A piece-work job can consist of many things, like the cases mentioned here.

Something similar is stated in the *Mukhtasar*. Bahram said, "It may be something in which the contractor only obtains a useful benefit when the work is complete. How will he obtain that benefit if the work is not complete? He must receive an amount which he benefits by. An example of that if when he looks for a runaway slave in one area and does not find him there, there is some benefit for the contractor because he knows that he is not that area." It is understood from the words of the Shaykh and the *Mukhtasar* that when the work is not complete, he gets nothing, and that is the case. That is the case since the Prophet said, "There is a camel load for the one who brings it."]

34.23c. Someone hired to sell something by the end of a term

If someone is hired to sell something by the end of a term and he still has not sold it at the end of the time, he is entitled to his full wage. If he sells it after half the term, he only receives half the wage.

[This is when he is hired to sell a specific item. The reason for this is that when the hire is connected to uses, each of part of it is in return for a part of the uses. If it is said that it was already stated that no term can be put on a job whereas here he mentions the end of the term and so this is a contradiction, the answer is that it is not a contradiction because before he was speaking about piece-work and here it is hire, which is not allowed without a term as Ibn 'Umar stated.]

34.23d. Renting (*kirâ'*)

Renting is like selling as far what is lawful or unlawful is concerned. If someone rents a particular riding animal to go to a certain place and the animal dies, the rest of the hire is cancelled. It is the same when an employee dies, or when a house is rented but collapses before the end of the term.

[Ibn 'Umar said that renting (*kirâ'*) is used for that which is without intelligence and hiring (*ijâra*) is for that with intelligence. It resembles

sales in respect of having a known term and known rent, and in being forbidden without a known term and the like. The difference between hire and rent begins with his description of renting a riding animal. It indicates that renting is used for selling the use of an animal which has no understanding. He calls an employee *ajîr*, because he has intelligence.

Renting the use of an animal is like when he says, "Rent me this animal," which he points at it, "so that I can use it for travel to a certain place." If the animal then dies, or is confiscated or claimed, the rent is cancelled and he pays for the distance he has travelled, without consideration for the first rent because it might be cheap or expensive.

If an employee is hired for a particular job for a known period to work in a house or tend sheep, the same ruling as that of the animal applies. The rest of the hire is cancelled. The same applies when all or part of a house collapses or there is great harm in it or its burns or is claimed before the end of the rent, whether the rent is monthly or yearly. It is cancelled and he pays for the time he lived there.]

34.23e. Teachers and doctors

There is nothing wrong in a teacher teaching the Qur'an being paid when the student has mastered it and for a doctor to be to be employed provides he cures the patient.

[It is permitted to employ someone to teach the Qur'an to children until they master it, i.e. memorise it, all or part. There is also no harm in hiring a doctor who is paid when he cures the patient.]

34.23e. The death of a renter does not end the rental

The rental of an animal or house does not end with the death of the renter nor does not the hire of a shepherd end by the death of the sheep. The sheep should be replaced with a similar flock.

[That is because the item rented remains and the heirs can rent it for its like or less. In the case a shepherd, if he is not given a new flock, he is paid the full wage.]

34.23f. When a rented animal dies

If someone rents out an animal with a guarantee and then the animal dies, he should provide another. If the rider dies, the rental is not cancelled and his heirs must hire another rider.

[An example is when he says, "Rent me an animal I can use to get to such-and-such a place." If the animal dies, the one who rented it to him must replace it because the uses are his responsibility and not connected to this particular animal. If the rider dies, i.e when someone rents an animal and pays for it and then dies, the rent is not cancelled. His heirs rent the animal for someone who is like him in ability and condition.]

34.23g. Destruction of implements

If someone rents a household implement or something else, he is not liable for it if it is destroyed or lost while in his possession. His word is believed about that until it can be proven that he is lying.

["Implement" *(mâ'ûn)* is a general term for utensils in the house, like pots, platters, axes, and sieves. "Something else" would be like a garment or riding animal. If he says it is destroyed, the one who rented is believed unless there is evidence to the contrary and then he is liable. This is like when he says, "It was destroyed at the beginning of the month," and then it is seen with him after that. It is understood by "in his possession" that if he removes it from his possession and it was destroyed by someone else, he is liable since he rented it to someone not trustworthy or someone heavier or more injurious than him.]

34.23h. Artisans' responsibility

Artisans are responsible for things they lose, whether they are working for a wage or not.

[Artisans are those who set themselves up to work for their livelihood, like tailors. They are responsible for the value of things they lose, assessed on the day they took possession of those things, and receive no wage for the work they did on them, i.e. because they are responsible for the value of the item before any work done on it. It states in the *Mawwaziyya*, "The owner cannot say, 'I will pay the wage and take its value after the work.'" Ibn Rushd said, "Unless the artisan confirms that he lost it after the work was done."]

34.23i. Bath house owners

The owner of a public bath house is not liable [for belongings lost by clients].

[Ibn Naji says that his words mean that he is renting out and is not a guard for the clothing. Ibn ÔUmar stated the opposite of this. He said that the owner of a bath house is a guard of the belongings, whether he guards them for a fee or without a fee. This is where they are stolen or destroyed by the command of Allah Almighty. As for when he says, "A man came and asked for them and I thought that he was their owner and so I gave them to him," then he is liable. The same applies when he says, "I saw the one who took them and I thought that he was their owner." Ibn al-Musayyab said, "The owner of the bath house is responsible, and that is what Abu Hanifa said.]

34.23j. Shipowners

The owner of a ship is not liable [for lost cargo or damage]. A shipowner is not paid his hire until he delivers his cargo.

[He is not liable for the ship floundering because of wind or waves. He does not receive his hire until he delivers the cargo because the fee for the ship is one that of hire. If the aim is not achieved, the fare is not deserved. It is said that he is paid a fare according to how far the ship travelled. That seems likely because it is more appropriate to connect the rent of the ship to hire than to connect it to piece-work because the end is known and the wage is known and so he is paid according to the distance travelled.]

34.24. Partnership Of Labour And Capital

34.24a. Partnership of labour

There is nothing wrong in a having partnership in physical labour when the partners work in the same place with the same work, or do work that is similar.

[It is the permission of each of the two partners to work together. The evidence for that in the *Sahih* from that Zuhra ibn Ma'bad. He used to go out to the market with his grandfather to buy food. Ibn ÔUmar and Ibn az-Zubayr would meet him and say to him, "Be our partner. The Prophet, may Allah bless him and grant him peace, prayed for you to have blessing," so he would be their partner. Often he would get a camel's load as profit and sent it home.

They work in the same place with the same work. This is the position of the *Mudawwana*. Ibn 'Umar explains it as being well-known. The '*Utbiyya* allows it to be in several places when the work they do is the same. The author of the *Mukhtasar* says that it well-known. The same sort of work is like two tailors. "Close" means that the work of one of them depends on the work of the other, as when one prepares the spinning to be woven and the other does the weaving. When the work is different and not similar, like a tailor and blacksmith, partnership is not permitted because of the uncertainty since the work of this one rather

than that one may be sold and he will take what he is not entitled to from his companion.

34.24b. Partnership of capital

A partnership in pooled capital is permitted provided the profit is shared between according to the size of the investment of each of them. The work of each is also in proportion to percentage of the profit stipulated for him. It is not permitted to share the profit equally if their investments differ.

[Capital partnership is in dinars and dirhams invested by both sides by consensus, and by food with the same description and category according to Ibn al-Qasim while Malik forbade that, i.e, forbade that with the same description, category and amount, let alone different ones.

When it is said that it is permitted, the profit shared between them and the work is in proportion to the size of the investment. For instance, if one of them pays 100 and the other 200, the profit and loss is divided into thirds between them.]

34.25 INVESTMENT LOANS (*QARD*)

34.25a. Investment loans (*qirad*) are made with money

An investment loan (*qirad*) is permitted with dirhams and dinars, and it is also allowed with unminted gold and silver.

[There are certains preconditions for a *qirad*. One is that it be in gold or silver, whether that is done by number or weight.]

34.25b. Investment loans are not made in merchandise

A *qirad* made in goods is not permitted. In such a case, the borrower is like an employee who sells them. If he then trades with the price, this then becomes an investment loan.

[An investment loan cannot be in any weighed or measured things because the basic root of the *qirad* is uncertainty because the wage is unknown since the agent does not know whether or not he will have a profit. Its amount is according to the profit. The investor does not know whether there is a profit or not and whether or not he will get his capital back. That is uncertainty because of these aspects. However the Lawgiver allowed it out of necessity since the people needed to transact trade with it. That amount of it which the Lawgiver permitted is what is permitted. It consists of minted cash or what has the same ruling in the form of pieces of gold and silver.

It this actually happens, then the agent becomes an employee. When he trades with the price, that is a *qirad*. It says in the *Mukhtasar* that his wage is the like of what he would get for selling the goods. As for his work in the *qirad* after that, he has the profit from such a *qirad*, if there is a profit. Otherwise he has nothing.

Then he explained the matters over which the agent has control rather than the investor.]

34.25c. Expenses

The agent has a right to clothing and food if he travels with a considerable amount of capital. He is only entitled to clothing for a long trip.

[This is mandatory. What is meant are his expenses for a return journey, with two conditions. One is the journey, and it must be one by which he intends to make the investment grow. If he travels with it to visit his

family or to go on hajj, he is not entitled to any expenses. The other is that the capital is considerable. The journey can be short or long in respect of food. There is no clothing entitlement for a short journey when the money is a lot and not just a little. A short journey is the distance of up to ten days and the definition of a lot of property is fifty dinars or more.]

34.25d. Division of profits

The profit is not divided until the capital is in cash.

[It means that it converted to gold or silver. A example of that is when he sells some goods and still has some which is the capital. If he is told to then divide that which is cash, that is not permitted because the remaining goods may be destroyed.]

34.26 Leasing An Orchard Or Plantation (*Musâqa*)

34.26a. A *musâqa* is permitted

Leasing an orchard or plantation of trees is permitted, provided that the two parties agree on the shares.

[It means that someone hands over his grapevines or date palms, for instance, to someone who attends to whatever they require of irrigation and work on the basis that the crop which Allah grants is divided in half between them or for a known portion of the fruit, like a third or a fourth. Its ruling is that it is permitted according to what is in the two *Sahih* Collections which states that the Messenger of Allah, may Allah bless him and grant him peace, employed the people of Khaybar for half of what it produced of fruits or crops. It is an exception to arable sharecropping, which is renting out land for what is produces, selling fruits and hiring them before they are good and before they exist, which is part of hire for something unknown.

It has certain preconditions. There must be two parties, and they must be capable of hire. The expression *sâqâ* [whose root is irrigation] is used, and it is not contracted for mutual trade and the like. It made on immovable property [i.e. the trees] and it would appear that it is not permitted in anything else. This is not the case. It is valid for in the case of crops like sugar cane, onions and cucumbers with certain conditions. One is that the owner of the crops is unable to attend to them. The second is that he fears the crop will die due to lack of irrigation. The third is that it has appeared from the ground. The fourth is that its ripeness has not yet appeared because then it would be permitted to sell it and so there is no need for *musaqa*. Part it is that he does it for known portion, whether a lot like two-thirds, or a little, like a fourth.

They must agree on the division of the shares. If he does it for certain number of *sa*'s or *wasqs*, that is not permitted.]

34.26b. The labour is done by the lessee

All the work is done by the lessee. No other work can be stipulated for him other than that entailed by the *musâqa* (irrigation) and nor is he required to start any work in the orchard unless it is of no consequence, like mending a fence and repairing a reservoir, without that involving actually initiating the work.

[The work consists of tending to what the fruits require in the form of irrigation, pollination, fertilisation, pruning, and repairing tools in the form of buckets, spades, and so forth. The owner cannot stipulate other work, like buying a garment for him and similar jobs which have nothing to do with the fruit. He cannot stipulate initiating any new work unless it is inconsequential, like mending an existing fence of the garden or mending the reservoir. It is not permitted to stipulate that he build it from scratch because that will remain after the fruit.]

34.26c. Tasks which can be stipulated

Pollination of the trees is done by the lessee as well as cleaning the places where the water settles among the trees, mending the place where the water falls from the bucket, cleaning the water source and similar tasks.

[Pollination is buying what is used for fertilisation and attaching it to the trees. That is the school. Cleaning the water source is to remove dirt or leaves from it. Similar tasks include pruning and drying.]

34.26d. Work animals may not be removed

The *musâqa* does not permit the expulsion of animals in the orchard. If some of them die, then the owner must replace them. The lessee must maintain the animals and the employees.

[The *Mudawwana* states that the owner of the garden cannot grant the *musâqa* contract and then stipulate the removal of any of the slaves or animals from the garden. Bahram said, "This is a prohibition, not simple dislike." If animals in the garden die, the owner must replace them, even if the worker has not stipulated that because the contract is based on work on that which is the responsibility of the owner of the garden in respect to those animals on which the contract occurred when they are in the garden. If the owner stipulates that the agent has to replace them, that is not allowed. The agent must fodder the animals and clothe and feed the employees according to the well-known position because he owes the work and all the burdens connected to it.]

34.26e. Cultivating unplanted parts of the orchard

The lessee should cultivate the unplanted area if it is slight, but there is no harm in leaving that up to the lessee, and this is the most lawful course. If there is a lot of unplanted land, it is not permitted to

include it in the *musaqa* contract of the orchard. It can only be included if is it is a third or less of the orchard.

[Unplanted land is land which is free of trees. A third or less is a slight amount. The owner can cancel that. If it is a lot, he is not part of the *musaqa* of the palm trees.

So a small area of unplanted land can be part of the *musaqa* with the above preconditions. If it is not mentioned or stipulated in the contract, it is the responsibility of the agent. The contract is void if the owner stipulates that it is his if the agent irrigates it, as the contract is void is it includes a lot of unplanted land or it is stipulated that it belongs to the agent [in the case of palm trees]. It belongs to the owner. As far as a lot or a little is concerned, it is in respect of all the fruits, not in respect to the share of the agent alone.]

34.27. A Farming Partnership

34.27a. Sharecropping is permitted

It is permitted to have a sharecropping partnership if both parties share in the cultivation and the profit is shared between them, whether one owns the land and the other does the work, or the work and rent are shared between them, or they both own the land.

[Some call it *muzâra'a*. The shaykh mentioned eight cases in this topic: four are permitted, three are mentioned in order and the fourth delayed, and four are forbidden, one of which is understood and three are stated.

As for the three which are permitted, he mentioned the first here, which is when one owns the land and the other does the work. That is when there is equality with the rent of the land in value, or close to it, as when the value of the land is 19 and the work 20 or the reverse. If they are far apart, it is not permitted.

The second is when the work and rent are shared between them.

The third is when they both own the land.

Then he moves to the forbidden three cases which are mentioned:]

34.27b. Forbidden forms of sharecropping

If one provides the seeds and the other owns the land, with the profit to be shared between them, that is not permitted, whether one or both do the work.

[One case is when one of them provides the seed and the other the land and the work. Another case is when one of them provides the seed and the work and the other the land. The third case is when one provides the land and the seed and they both do the work.

Then he indicates the fourth of the permitted cases and says:]

34.27c. Another permitted form

If they both rent the land and the seed comes from one and the work from the other, it is permitted if the values of the two undertakings are close.

[Or it is jointly owned, or it belongs to one and the other pays him the rent for half. This is when the cost of the seeds and the work are close. If they are not close then it is not permitted. That is the fourth forbidden case.]

34.27d. Rental of land with uncertain irrigation

No payment is made on renting land whose irrigation is uncertain until it is watered.

[This is like land watered by rain and land with a small spring. If irrigation is secure, like land watered by a river near a large sea, and like land watered by rain in the east, then when the contract of rental is made, it can be paid, even if it is for a long time, like 30 years.]

34.28 Liability For Damage To Crops Sold And Not Yet Claimed

34.28a. The effect of damage to crops

If anyone buys fruit still on the trees, and then a third or more of it is destroyed by cold, locusts, frost or something else, the cost of that is deducted from the price the buyer pays. If it is less than a third, then the buyer bears the loss.

[He buys the fruit after it appears but before it is fully ripe. Other things which can damage the crop are like wind, snow, armies and thieves. It is related by Ibn Wahb that the Prophet, may Allah bless him and grant him peace, said, "When a man buys fruits and then blight befalls it and a third of the fruit is lost, the liability is obliged for the owner." This is when the cause is other than lack of water. When it is due to lack of water, then there is no limit. It is reduced, be it a little or a lot, whether they are watered from spring or by rain because irrigation is the responsibility of the seller, and is part of the discharge of his responsibility.]

34.28b. When there is no reduction

There is no crop damage in a crop or what is bought after the fruit has been dried.

[That is because it is only sold after it is dry. The delay until after it has been dried is neglect on the part of the buyer.]

34.28c. Damage to vegetables

There is a reduction in crop damage to vegetables, even if it is little. It is also said that there is only a reduction if a third is damaged.

[This is like onions and chard because the damage is usually due to lack of water.]

34.29 Gift Of Fruit Which Can Be Dried (*'ariyya*)

34.29a. The 'ariyya

If someone gives a man an 'ariyya (a grant) of the fruit of palm trees from his garden, there is no harm in him buying them when they are ripe in exchange for dry dates, based on estimation of their measure.

[This is when he gives someone – whether a man, woman or child – the fruits as an *'ariyya*, which is granting him the crop which is still on those trees. It is not valid if it is a simple gift. When they are ripe, the giver can buy then by estimating their measure. The form of that is that it is said, "How much is on this palm tree of wasqs?" It is said, "It is five or more." Then it is asked, "How much will that be reduced when they are dried?" and the reply is a wasq or more. If something like five wasqs or less remain after that, it is allowed, and if it is than that, it is not permitted in exchange for dried dates of the same type.

34.29b. When they are cut

He given that when they are cut, if it is five wasqs or less. It is not permitted to buy more than five wasqs except with money or merchandise.

[This is not meant that it is not a precondition that it is immediate. They either agree to full payment when they are cut or are silent on it. A precondition of immediate payment might ential harm. As for immediate

payment without it is being stipulated, there is no harm. The limitation of five or less only applies to one who granted the *'ariyya*. He can buy them with cash or goods.]

CHAPTER 35. BEQUESTS AND FREEING SLAVES

(*Tadbir*, Kitaba, Emancipation, the *umm walad* and *wala'*)

There are six topics in this chapter, each of which has a reality, a ruling and other matters.

The first concerns bequests (*wasâyâ*). In the usage of the *fuqaha'* it is a contract which creates entitlements to the third of his estate which a person can dispose of and which become binding when he dies. They disagree about whether that is obligatory or recommended. Most scholars think that it is mandatory, as is expressed here.

35.1. BEQUESTS

35.1a. The right to make a bequest

It is imperative for someone who has property to prepare a will.

[It should be witnessed. If it is not witnessed, it is invalid, even if it is found in his writing unless he says, "Carry out the document you find in my handwriting." Then it is carried out.]

35.1b. No bequest to a heir

There can be no bequest in favour of an heir.

[He either means the fact that it is not sound or that it is simply prohibited, The position of the School is that it is not valid, even if it is less than a third. If the other heirs do allow, it is made a gift from him.]

35.1c. Bequests are from the disposable third

Bequests are made from the disposable third. Anything which exceeds that is rejected unless the heirs allow it.

[That which the person who makes a will can dispose of is a third, or it means that the one making the will cannot dispose of more than a third. If it is more than a third, even a small amount, it is only allowed by the permission of the heirs when they are sane and adult.

The third is calculated on the day of death, not the day when the will is read, according to what Ibn al-Hajib states. Ibn 'Abdu's-Salam counters him by saying that it is contrary to the school. "What the School considers in the bequest is that it is taken from the third on the day the bequests are carried out, not the day of death, so that if the third covers all the bequests on the day he dies and then a blight befalls the property and destroys some of it so that the third does not cover them, then the ruling on the day of the division is that of someone who has willed away more than a third. I do not know of any disagreement about that in the school."]

35.1d. Emancipation takes priority

In the disposable third, one begins with freeing a particular slave.

[He deals with the order with which one deals with bequests. The first is the emancipation of a particular slave, whether he owns that slave or someone else owns him, as when he says, "Buy the slave of so-and-so and free him." We mentioned that this is first in the bequests, but when there is a bequest about unpaid *zakat* or *kaffarat*, that takes precedence over emancipation.]

35.1e. The order of precedence

Next is priority freeing a *mudabbar* when the *tadbir* declaration was made when the master was healthy. This precedes emancipation or any other bequests made when he was ill, including unpaid zakat.

A bequest to pay zakat is taken from the third before other bequests, but a *tadbir* made when the master was healthy takes precedence over it.

[If he did not mention unpaid zakat in the will, it is not paid from the third.]

35.1f. When there is not enough in the third to cover all bequests

It the third is not enough for then the people of shares who have no precedence receive proportional shares of the rest.

[This is the same principle as *'awl* (adjustment) in shares of inheritance. For instance, take the case when the deceased willed one man half of his property and another a quarter. You compare the position of the half and the fourth and see what is between them and you find that the common factor is a quarter. You take the half and fourth and combine them and so they are three and you know the third is divided into three shares between them, one share for the one with a fourth and two for the one with a half. This is when the heirs do not allow the bequests. If they allow them, then the one with the bequest takes the half and the other a fourth, and the rest is taken by the heirs.]

35.1g. Revoking a bequest

A man may revoke his bequest of emancipation or other things.

[Even if he is a fool and whether he is healthy or ill. The same applies to women and children, He can retract a bequest whether he is healthy or

ill, as it states in *Tahqiq al-Mabani* from al-Fakhani and Bahram. He can retract it, even if he testified in his will that he would not retract it. That is the '*amal* in this.]

35.2. *TADBIR*: AN UNDERTAKING TO FREE A SLAVE AT THE MASTER'S DEATH OR A CERTAIN DATE

35.2a. Definition of *tadbir*

A *tadbir* is contracted when a man says to his slave, "You are *mudabbar*" or "You are free afterwards," (i.e. after my death)

[Taken the departure (*idbâr* or *dabr*) of life. The root means what is behind something. *Tadbir* is recommended. One of its preconditions is the form with which it is made, like saying, "You are free after my death" or "You are free on the day I die." The slave must be of age to be considered responsible and sane. It is not sound to grant it to a mad person or a child even if he has discrimination.]

35.2b. Status of a *mudabbar* slave

Then he is not permitted to sell such slave, but he is still entitled to his work and, as long as the master is not ill, he can confiscate the slave's possessions. If it is a slavegirl, he can have intercourse with her.

[If he sells such a slave, the sale is invalid and the slave remains a *mudabbar* as long as the sale is not connected to emancipation. If it is connected to emancipation and the buyer emancipates him, he is free and he has his *wala'*, i.e. if he sets him free while the master is alive. If the sale is carried out with emancipation, the one who set free has the *wala'*. If he is freed after the death of the one of the one gave him the tadbir, it is not carried out because the *wala'* is connected to the one who granted the *tadbir*.

The master is entitled to his work until he dies because he is his master. If the master is ill and may die, he cannot confiscate the slave's property because that is removing his property for someone else.

He can have intercourse with a slavegirl because the basic principle is that she is allowed. If she becomes pregnant, she becomes a *umm walad* who is freed from his main estate [rather than from the disposable third] after his death.]

35.2c. A slavegirl due to be freed at a certain time

He cannot have intercourse with a slavegirl who will be set free a certain date nor can he sell her. He can demand her work and can confiscate her possessions as long as the term for her emancipation is not near.

[This is like when he says, "Serve me for a year and then you are free" because the term may come before his death and so she will be free. If he has intercourse with her she may become pregnant and then would only be free after his death [as a *umm walad*]. Such a relationship in this case resembles a *mu'ta* marriage [a temporary marriage because it has a term at which it ends]. If a slavegirl has a term fixed for her, he must not have intercourse with her, or give her away or give her as charity because she has one of the contracts of emancipation.

[The *Hashiyat al-'Adawi* notes that if he does have intercourse with her, he is disciplined for that, but is not subject to a hadd punishment.]
She can work for him since she is still his property until the end of the term. He can confiscate her possessions which she has, for instance as a gift from him, but this is restricted to when the term of emancipation is not near. There is no definition of near.

[The *Hashiyat al-'Adawi* notes that there is a second position about "near" and that it is about a month.]

35.2d. The freeing of a mudabbar is from the disposable third

When the master dies, the emancipation of the mudabbar comes out of the disposable third, while a slave promised freedom at a certain date comes from the total estate.

[Priority in the disposable third of the estate is given to a slave given a tadbir when the deceased was healthy. Then comes the slave given a *tadbir* when he was ill. If someone has been set a date at which he will be free, he is different to the *mudabbar* and is set free from the capital of the estate.]

35.3. *KITÂBA*: THE AGREEMENT TO FREE A SLAVE ON PAYMENT BY AGREED INSTALMENTS

35.3a. The *kitâba* agreement

A slave with a *kitâba* (*mukâtib*) remains a slave as long as he still owes anything. The *kitâba* agreement is permitted when made with the agreement of the slave and master for an amount to be paid in instalments, however many or few they are.

[No matter how little is outstanding of the payments, the *mukatib* is still a slave since it is confirmed that the Messenger of Allah, may Allah bless him and grant him peace, said, "The *mukatib* remains a slave as long as a single dirham of his *kitaba* is outstanding."

Kitaba is the emancipation of a slave in return for money paid in instalments. There is no disagreement that it is permitted. The Book indicates its legality: "*If any slaves you own desire to make a contract to free themselves, write it for them if you know of good in them.*" (24:33) The precondition is that the payment be done in instalments. Al-Fakhani reported from the *Mudawanna*, "It is not immediate and the instalments are stipulated, like x amount every month or every year based on their mutual agreement."

In *al-Jawahir* Abu Bakr said, "Our scholars say that an immediately paid *kitaba* is permitted. It is analogous to a sale in which both immediacy and deferral are accepted."]

35.3b. When the slave defaults

If he is unable to pay, he reverts to a full slave and the master can keep what he has already received. The slave can only be deemed insolvent by the sultan after failing to pay if he refuses to acknowledge his insolvency.

[None of him is free. The master keeps what he paid because he is his slave. If the slave acknowledges his inability to pay, he automatically reverts to full slave status.]

35.4. Children And The Property Of Slaves

35.4a. Status of the children of women slaves

If a woman has a *kitaba* or *tadbir* agreement, or a date is set for her emancipation, or she is pledged as security, any child she bears shares her status.

[Her children have her status whether the child is conceived in marriage or by fornication. If the father is the master, the child is free without dispute if the master is free. If the father is a slave, it is slave like her in all her rulings of emancipation, work, sales and the like.]

35.4b. Status of children of a *umm walad* by other than the master

The children of an *umm walad* fathered by other than her master have the same status as her.

[This about any children she has after she becomes a *umm walad*. There is no disagreement about that in the School. As for children she had before she became *umm walad*, they remain slaves.]

35.4c. The possessions of slaves

A slave's property belongs to him his unless the master confiscates it. If the master frees him or grants him a *kitaba* and does not exclude the slave's property, then he cannot confiscate it.

[Ibn Naji said that it appears from what he says that he actually owns it, and so there are two secondary rulings from his words. One is that he is permitted to have intercourse with his slavegirl since he owns her. The second is that a slave is obliged to pay zakat on the property in his possession. The well-known position, however, is that a slave does not pay zakat.

[Th*e Hashiyya of al-'Adawi* points that his ownership of property is not, in fact, complete.]
It is agreed about anything he earns property after the contract of *kitaba*. According to the School, it applies to what he earned before the contract.

35.4d. A slavegirl with a *kitaba*

The master cannot have intercourse with a slavegirl who has a kitaba contract.

[That is because her person and property are protected. If he does have intercourse with her, the *hadd* is not imposed on him in the well-known position, He is punished unless he is excused due to ignorance or error and he does not owe any bride-price. If she is a virgin or he forces her, he owes the amount of her depreciation. It states in *al-Jawahir*, "If she becomes pregnant, she can choose between insolvency and become an *umm walad* or continue with the rest of her *kitaba*. If she chooses insolvency, she becomes a *umm walad*. If she chooses to pay the rest of

her *kitaba*, she is the mother of a child and a *mukatiba* [which means that the master is responsible for her maintenance while she is pregnant]. When she pays the instalments, she is free. Otherwise she is free when the master dies.

35.4e. Children of a slave with a *kitaba*

Any children born to a man or woman slave with a kitaba contract after they have concluded a *kitaba* have the status and they are free when the parents are free.

35.5. FREEING A GROUP BY *KITABA*

It is permitted for a group to have a *kitaba* but they only free when the entire sum is paid.

[This is a single contract when they belong to the same master. They pay according to their ability to pay on the day of the contract of the *kitaba* was made.]

35.6. RESTRICTIONS ON A *MUKATIB*

A slave with a *kitaba* cannot free his own slaves or waste his property until he is free. He cannot marry nor undertake a long journey without his master's permission.

[He can not get rid of his property without recompense for it, as through gifts and *sadaqa*, if that considerable. The reason for that is that it would be injurious to his master and it might lead to his inability to pay. He cannot undertake a long journey in which his instalments will become due before he returns. Al-Aqfashi said that the permission of his master refers to both marriage and travel. He can do it with his master's permission.]

35.7. CHILDREN OF A DECEASED *MUKATIB*

35.7a The status of the children of a *mukatib* when he dies

If the slave with a *kitaba* dies leaving a child, he takes his place and pays from his estate whatever is still unpaid which becomes immediately due. His children inherit any remaining property.

[His children who are part of the contract take his place, but that is not paid in instalments. It is due immediately and is paid from his estate if he left enough to cover the instalments or more, because his responsibility ends at death, like all deferred debts.]

35.7b. If there is not enough to cover it

If there is not enough to settle the amount, the children should trade with what there is and pay it off in instalments if they are adults. If they are children, and the estate is not enough to cover the instalments until they come of age and can trade, they revert to being full slaves.

[Adult children continue to pay the instalments if they have the ability to work and can be trusted with the money. Otherwise the money is put with a trustee who pays on their behalf. If they are minors and there is enough to cover the instalments until they come of age, they are not made full slaves, but the money is lodged with a trustee who pays the master his instalments.]

35.7c. If the *mukatib* has no childrem

If he does not have any children in his *kitaba*, his master inherits from him.

[And there is not enough to cover the debt, the master is the heir by virtue of him being a slave, not by the *wala*', since he dies a slave.]

35.8 Umm Walads

A *umm walad* is a slavegirl who has borne her master a child.

35.8a. When a man has a child by his slavegirl

If a man has child by a slavegirl, he can enjoy her while he is alive and then she is set free from the main estate when he dies.

[He is permitted to enjoy her by the words of Allah, "*Or those they own as slaves, in which case they are not blameworthy.*" (23:6) The Messenger of Allah, may Allah bless him and grant him peace, had such a relationship with Maria the Copt. When the man dies, his *umm walad* is set free first, without any requiring any legal ruling and cannot be enslaved on account of his debts, whether they existed before or after her pregnancy.]

35.8b. Her status

He is not permitted to sell her or demand her work or demand revenue from her. He may, however, demand that from her child by another man.

[If he does sell her, the sale is void, even if the buyer frees her or takes her as a umm walad or she dies. The buyer is given the price back. The same applies to gifts, pledges and the like. He can not oblige a lot of work from her, but can oblige minor work like grinding flour and fetching water. He cannot make her work for someone else, but he can do that with her other children.]

35.8c. Her children's status

Such a child has the same status as his mother regarding emancipation and is free when she is free.

[This refers to her children by other than the master. This is when the master dies when she is alive. If she dies before him, her children are not free until the master dies.]

35.8d. Miscarriages

Any miscarriage known to be a child makes her an *umm walad*.

[No matter whether it is a lump or clot, and even clotted blood, according to the well-known position.

[This has two preconditions. The first is that the master admits to having had intercourse with her, and the second is that, in the absence of the child, two women testify to the birth or miscarriage.]

35.8e. Denial of paternity

He cannot claim coitus interruptus in order to deny paternity of the child if he admits to having had intercourse with her. If he claims that he has observed *istibra'* and not had intercourse with her afterwards, the paternity of her child born after that is not attributed to him.

[Coitus interruptus is withdrawal before ejaculation. It does not remove the paternity because even a small amount of semen can result in conception.

If he has observed *istibra'*, which is remaining apart from her for at least one menstrual period or more, then in the famous position the child is not attributed to him. He is not obliged to take an oath in that (about having observed *istibra'*).]

35.9. Obstacle Of A Slave's Debts

It is not permitted for someone whose property is covered by debts to set a slave free.

[Freeing slaves is one of the greatest devotional acts one can do to draw near to Allah. It is confirmed that the Prophet, may Allah bless him and grant him peace, said, "If someone frees a believing slave, Allah will save a limb of his from the Fire for every limb of his." In one version, "a limb of his from the fire for every limb of his, even his genitals for his genitals." Freeing a man is better.

Emancipation has three pillars.

1. The first is the person frees, who must be adult and sane with no legal restrictions on his dealings and not having debts that take up all his property, An emancipation done by a child, madman or one legal restricted from financial dealings is not permitted. Nor is it permitted if his debts cover all his property, whether those debts are immediate or deferred because then he would be disposing of someone else's property.
2. The second is the slave, who can be a full slave or one with some degree of freedom, like a *mudabbar*.
3. The third is the form which indicates removal of ownership as, "You are free."

35.10 Freeing Part Of A Slave

35.10a. Someone who frees part of a slave frees all of him

If someone frees part of his slave, he is made to free all of him.

[As when he frees a fourth, third or half. He is judged to have freed all of him not just part of him, when the slave set free is Muslim sane, sensible with no debts and when the slave has one master.]

35.10b. If there is more than one master

If someone else has a share in the slave, the share of his partner is estimated on the day the emancipation is settled, and the slave is free. If he does not have the money to pay the partner, the portion of the partner in the slave remains.

[The one who set free his part must pay the partner the price which is assessed on the day of the judgement of emancipation if there is judgement in it. Then the emancipation depends on the ruling issued for it, not by the simple freeing of part of the slave. If the person is wealthy, he pays the share of the partner on the day of the judgement. If he is not wealthy on the day of the judgement, then the slave remains a slave unless his remaining master frees him. If he has enough to pay for part of the share of the partner, it is estimated according to what he has.]

35.11. Freeing Because Of Mutilation

If someone mutilates his slave clearly, such as cutting off a limb and the like, the slave is set free.

[Like a foot, hand or like a testicle. Then the master is obliged to free him, even if that was intended to increase the price since he tortured him by doing that. Similar to cutting off a limb is gouging out an eye or the branding his face or elsewhere with fire. He is freed from his estate. It appears from his words that he is freed automatically on account of the mutilation, and Ashhab says that. Ibn al-Qasim says that he is only freed by a ruling.]

[Al-'Adawi: There is disagreement about whether the master is punished by beating and imprisonment or whether the punishment is the enforced emancipation of the slave.]

35.12 Freeing Because Of Kinship

If someone obtains ownership of his parents, his children or grandchildren, grandfather or grandmother, or uterine, paternal or full brother, that slave is freed automatically.

[This applies to relationship by blood or by suckling. All he mentioned is automatic and does not require a ruling in the well-known position provided that he does not have debts which would take up the price. If he has debts which would take up the price, he cannot free him by that and nor sell nor can remain the owner of such a relative. Rather he is sold for him to cover the debt.]

35.13. Freeing Which Is A Consequence

If someone frees a pregnant woman, her unborn child is free with her.

[Whether the child is by marriage or fornication. The child is free because every child who comes by marriage or fornication without ownership follows the mother in freedom or slavedom.]

35.14. Freeing Because Of A Legal Obligation

In freeing slave to discharge an obligation, one may not free a slave who is the process of being freed, like one with a *tadbir* or a *kitaba* or something similar, nor one who is blind, or has had a hand or the like amputated, or a non-Muslim, a child, or someone who is subject to enforced guardianship.

[This is on account of obligations like the *kaffara* for killing (and that for *dhihar* divorce or for breaking the fast of Ramadan).

Categories who cannot be freed for this also include an umm walad, someone with a date at which they will be free or someone who is partially free, because it is muddled with the contract of liberation. [Only full slaves fulfil the obligation.]

Furthermore in satisfying the obligation, one cannot free amputees since that decreases the value of the slave by the defect. It cannot be a non-Muslim because Allah says, "a believing slave". It cannot be a child because he is not one of the people of responsibility. Nor can someone debarred from dealing with his own finances, who is a fool who spends his money improperly.]

35.16 *WALA'* (CLIENTAGE)

This gives the one who has this has what is tantamount to an agnate relationship to the former slave, i.e. as if he were related to him via the father.

35.16a. The one who receives the *wala'*

The *wala'* belongs to the one who sets a slave free. It is not permitted to sell it or give it away.

[The person who removes ownership by liberating a slave becomes his *mawla* if the one who is freed the slave is a Muslim. If the one who freed is an unbeliever and he frees a Muslim, he has no *wala'* relationship to his freed Muslim. The wala' then goes to the community of Muslims. If the person then becomes Muslim, the *wala'* does not revert to him. The basis for this principle is found in the words of the Prophet, may Allah bless him and grant him peace , "The *wala'* belongs to one who sets free." It cannot be disposed of because of what Ibn Hibban and others related that the Prophet, may Allah bless him and grant him peace, said, "The *wala'* is flesh like the flesh of lineage. It is not sold or given away."

35.16b. Freeing on behalf of someone

If someone frees a slave on behalf of another man, that man still has the *wala'*.

[If the man who ordered the emancipation is free. If he is slave, then his master has the *wala'*.]

35.16c. The one who receives a *shahada*

If someone becomes Muslim at someone's hand, the wala' does not go to him, but to the Muslims as a whole.

[When an unbeliever says the shahada with someone, that person does not receive the *wala'* of that person [because the wala' only belongs to the person who emancipates.]]

35.16d. Women receiving the *wala'*

When a woman sets a slave free, she has the *wala'* of that person as well as the *wala'* of the person's children and any slaves that person frees. In the case of someone she has not set free, she does not inherit the *wala'* from her father, son, husband or anyone else.

[She has the *wala'* of their children and freed slaves because she is the initial emancipator and that is attributed ultimately to her. The *wala'* is inherited via the agnatic male line and not the female.]

35.16e. Inheritance of a slave with no *wala'*

The estate left by a slave without a *wali* (*sâ'iba*) goes to the Muslim community.

[This is the *sa'iba*. Such a status comes about when someone tells his slave, "You are free as a *musîb*" or "*sa'iba*", by which he means

emancipated. This expression is disliked because it was used in the Jahiliyya for livestock as Allah Almighty says about them, "*Allah did not institute any such thing as bahira or sa'ibaÉ*" (5:105)

35.16f. Inheritance of *wala'*

The *wala'* is inherited by the closest agnatic heir of the dead person. If he has two sons, they share the wala' between them. If one of them dies, leaving sons, the *wala'* goes to his brother rather than his sons. If one of them dies leaving one son, and the other dies leaving two sons, the *wala'* is shared between all three.

[Although the term "inheritance" is used here, properly speaking the *wala'* is not inherited, but there is inheritance on account of it.]

[Al-'Adawi: *Wala'*, like lineage, is only establishedby two witnesses.]

CHAPTER 36: PROPERTY RIGHTS

Pre-emption (*shuf'a*), gifts, *sadaqa*, *hubus*, pledges, the '*ariyya*, deposits, lost items, and misappropriation

This chapter deals with nine topics.

36.1 PRE-EMPTION IN PROPERTY (*SHUF'A*)

36.1a. The right of pre-emption

Pre-emption is allowed in something which is jointly owned.

[*Shuf'a* is derived from *shaf'* (even), the opposite of odd, because the pre-emptor (*shafi'*) adds the share which he takes to his share and so his share becomes two shares. Ibn al-Hajib defined it as the partner taking his share from his partner by an enforced purchase.

Then he moves to the relationship of the neighbour. Our position that is he has no pre-emption. What is taken by force can be a voluntary sale. It is an allowance which is allowed to avert harm to the partner. Jabir said, "The Messenger of Allah, may Allah bless him and grant him peace, judged that there was pre-emption in all undemarcated property. When there were clear boundaries and roads were clear, then there was no pre-emption." (al-Bukhari & others) There are two rulings based on this hadith: the obligation of pre-emption is for the partner rather than the neighbour because the ruling in the hadith is that there is no pre-emption after demarcation, and so a neighbour cannot pre-empt his neighbour. The second is that the obligation concerns real estate rather than goods.

He indicates by mentioning joint ownership. He means that the right concerns land and buildings and trees attached to it. Al-Fakhani said that the wisdom in affirmation of pre-emption is the removal of harm to the partner and it is particular to real estate because harm occurs most

frequently in it. They agree that there is no pre-emption in animals, clothes, utensils and all moveables. A precondition for pre-emption is that it is something in which division is feasible, thus excluding things which do not accept it without being rendered unsound, like a bath-house.]

36.1b When there is no right to pre-emption

There is no pre-emption in what has been divided, nor is there pre-emption in respect of a neighbour, a road, the courtyard of a house whose rooms have been divided, a male palm tree or a well when the palm trees or the land has been divided. There is only pre-emption in land and the buildings and trees on it.

[Pre-emption was prescribed either to avoid harm in the division or harm to a partner. That does not exist in demarcated property which is why there is no pre-emption in it. Three of the Imams agree that the neighbour has no pre-emption while Abu Hanifa disagrees and affirms pre-emption for the neighbour, but in his view the partner takes precedence over the neighbour. There is no pre-emption in a private road shared between partners in a house or a garden. As for public roads, it is not permitted to sell them. As for a yard when the house is divided, there is no pre-emption, but if the estate is not divided and then is sold and one of the partners has his share of the estate and the road, then there is agreement that there is pre-emption in both the estate and the road.

There is no pre-emption in a male palm or a well. If pre-emption had been permitted in that, the partner would take all the male palm trees and the buyer would have none because pre-emption in that in which the partners share is only the male palm. If land is divided and the well remains, there is no pre-emption.

To sum up, pre-emption applies to jointed owned property and the right is cancelled in three ways.

One is when it is abandoned by explicit words, as 'I give up my pre-emption."

The second is what indicates that it is abandoned like seeing the buyer building and planting and still remaining silent. The third is indicated next.]

36.1c. When pre-emption lapses

There is no pre-emption for someone present after a year has passed. If he was absent he still has his right, even if it has been a long time.

[i.e present in the land where the sale occurs. If he is present for a year and is silent about seeking pre-emption for two months, that cancels his right. The one who was absent and far away still has the right since he was absent before the possibility of pre-emption arose, whether or not he knew about the sale. There is no definition of near or far (because circumstances vary).]

36.1d. Forcing a decision

A buyer must guarantee the one with the right of pre-emption. A possible pre-emptor may be forced to exercise his right or forgo it.

[[The buyer is responsible for any damage to the property.] Al-Fahkani said that if someone is entitled to take it from the pre-emptor, he takes it without giving him anything and the pre-emptor must reimburse the buyer what he paid and the buyer returns the price to the seller. [This is when there has been more than one transaction.]

The buyer can summon the pre-emptor and demand that he abandon his right or pay the price for which he bought it if it has a like or its equivalent if it was something with value [i.e. if was paid for in livestock or goods, for instance]. If he does one of the two, there is no discussion.

Otherwise the case is presented to the judge. If he asks for delay so that he can choose or bring the price, he is given a delay of three days.]

36.1e. Pre-emption cannot be transferred

Pre-emption may not be given away or sold. The right is divided between partners according to their shares.

[It is not permitted for the pre-emptor to give or sell his right of pre-emption. That form of that would be that Zayd who can pre-empt says to 'Amr, who has no right, "I have given you my right to pre-empt with Khalid," or "Buy it from me for such-and-such." Pre-emption is a right granted to a partner for the sake of removing harm from him by entering into a partnership with someone he does not know.

36.2. GIFTS (*HIBA*), *SADAQA*, AND *HUBUS* (*WAQF*)

36.2A. GIFTS AND *SADAQA*

[Gifts and *sadaqa* only differ in two things. One is that gifts can be taken back while *sadaqa* is not taken back. When a father gives his son something, he can take it back from him, but that is not the case if he gives him *sadaqa*.

The second difference is that it is permitted for a gift can revert to the ownership of the giver by a sale, gift, *sadaqa* or some other method. That is not the case with *sadaqa*. It is disliked for it to revert to the ownership of the giver by the means we mentioned about the gift.

Its status is that it is recommended as indicated by the Book, Sunna and consensus. In the Book, Allah says, "*Allah commands to justice and doing good,*" (16:90) and "*Who, despite their love for it, give away their wealth.*" (2:176) In the hadith, "If anyone gives in sadaqa as much as a date from honest earnings - and Allah only accepts what is good - Allah

will accept it in His right hand and will then increase it in size for the giver, just like one of you might rear a foal, until it is the size of a mountain." Ibn Rushd and others related that consensus on it.]

[*Hashiyat al-'Adawi:* There are four essential elements (*arkân*) in gifts. 1. The giver, who must not be someone legally debarred from dealing with financial matters. A gift given by such a person is not valid 2. The recipient, who must be someone who can own something. 3. The gift, which must be something whose ownership can be transferred. 4. The form of the giving.]

36.2b. It is dependent on possession

A gift, *sadaqa* or *hubus* is only complete by actual possession of it. If the giver dies before it is collected, then it becomes part of inheritance, unless that gift was made during his final illness. Then it is paid out of the disposable third as long as it is for other than an heir.

[If the giver dies before the gift is taken, it reverts to the estate and is inherited and the gift is void. If he makes the gift in his final illness, however, it is paid out as a bequest unless it is for a heir because it is not lawful to make a bequest to an heir and so it is void. But if the other heirs allow it, it is carried out.]

36.3 GIFTS AND *SADAQA*

36.3a. Gifts to close relatives

A gift to a close relative or poor person is like *sadaqa* and cannot be taken back.

[A close relative is one with whom marriage is not permitted and such a gift is for the purposes of maintaining ties of kinship. The prohibition

against taking back gifts or *sadaqa* to a poor person is because they were given away for the reward and seeking the face of Allah.]

36.3b. Gifts to one's son

When someone gives *sadaqa* to his son, he cannot take it back. He may, however, take back something he gave to a minor child or adult as long as he has not used it to get married or given it as a loan and nothing has happened to the gift.

[If the gift was not for the sake of ties of kinship or his poverty or out of the desire for the reward of the Next World, but was for himself. There is no difference between a male or female child, rich or poor. Something happening to a gift would be like if he was given iron and has made it made into a tool.]

36.3c. A mother's gifts

A mother may take back a gift as long as the father is alive. When the father is dead, she cannot take it back.

[Whether the child is a minor or adult as long as the father is alive, even if he was mad at the time of the gift, unless, by the gift, she intended to maintain ties of kinship, or the reward of the Next World or because of his poverty. Then she cannot take it back.]

36d. Gifts to orphans

One may not take back a gift to an orphan. An orphan is someone who has lost his father.

[If he has no father at the time of the gift, she cannot take it back because he is an orphan and thus it becomes like *sadaqa*. No matter what the age a person is, if his father is dead, he is called an orphan in

the case of humans. In the case of animals, lack of mother makes an orphan, and in the case of birds, both parents.]

36.3e. Retaining possession of the gift

A father is permitted to retain possession what he gives to his minor son when he does not live in that (if it is a house) or wear it if it is garment. He can only do that if the gift is a specific article. He cannot do that if the son is an adult.

[This is permitted even until he is bankrupt or dies. If the gift is a house and he continues to live in it or most of it or to wear a garment he gave him until there is an impediment, the gift is nullified. If he lives in a small part and rents most of it out, it is not nullified. This is when the gift is described and specified, like a particular house. He cannot say, "I have given you one of the houses." The father cannot keep that gift if the child is adult and sensible. If the son is a fool, he can keep possession of it.]

36.3f. Not taking back *sadaqa*

A man should not take back his *sadaqa* or nor can he recover it except by inheritance. There is no harm in drinking the milk of an animal he gave as *sadaqa*. He does not buy back anything he gave away as sadaqa.

[He does not take back *sadaqa* at all once it is received, either by buying it or any other method, and here is no exception to that except by inheritance, and then he owns it because he had no part in returning it and is not suspect. He can drink the milk of something like a cow or goat and there is nothing wrong in that because he has not altered the value of he gift. He does not buy back his *sadaqa* from the person he gave it to nor from anyone else. This prohibition is one of dislike, which is the School.

36.3g. Gifts with expectation of a recompense

If someone is given a gift for which the giver expects recompense, he should either repay it with something of equal value or return the gift. If he no longer has it, then he must give back its value when he sees that the giver wanted recompense for what he gave him.

[This is when the man gives something of his property to another so that he will reward him for it. It is a contract of recompense for unknown goods. It is permitted. Al-Baji said, "The gift for a recompense is not an act of nearness, but it is a sort of mutual recompense. The one given either recompenses the value of the gift or returns it if the gift is still available. If it is no longer with him, he repays the price or the gift if he thinks that the giver wanted that according to the circumstances.]

36.3h. Not giving all one's property to one child

It is disliked for someone to give all his property to one of his children. Giving part of his property is allowed. There is nothing wrong in giving all his property to the poor for Allah.

[This is a dislike of one of avoidance in the well-known position. He should not give most of it to one of them either, but what he does is carried out unless his other children rise and forbid him to do that. They can force its return (when they fear that they will have to support him). The basis is the hadith of the Prophet, may Allah bless him and grant him peace, "Fear Allah and be equitable to your children." A small amount is permitted.

He can give all his property to the poor as long as his children do not forbid it. That is limited to when he is not ill. If he is ill, he can only dispose of a third.]

36.3i. If the gift has not been collected

If someone who is given something does not take possession of it until the donor is ill or bankrupt, he cannot then take it. If the recipient dies, his heirs can take it if the giver is still in good health.

[An illness here is one in which it is feared that he may die. As well as applying to gifts, this principle also applies to *sadaqa* and *hubus*.]

36.4. *HUBUS* (*WAQF*)

[A hubus is granting the usufruct of something, either in perpetuity or for a specific period after which it then reverts to private property.

[The Four imams allow it but disagree about whether it requires the ruling of a judge or is carried out in the same manner as bequests. Malik, ash-Shafi'i and Ahmad say that it is sound without these two methods and is binding, Abu Hanifa says that it requires one of these two.]
It is recommended because it is one of the best things which one can use to draw near to Allah. The basis for its permissibility is that the Messenger of Allah, may Allah bless him and grant him peace, created a *hubus* as did 'Umar ibn al-Khattab, 'Uthman, 'Ali, Talha and az-Zubayr, may Allah be pleased with them, and other Companions for houses and gardens.

[There are four basic elements (*arkân*) in the hubus. 1. The founder and his suitability for establish a *waqf*. 2. The verbal form of founding the *waqf*, or whatever the custom for that is. 3. The object or place which comprises the waqf. 4. The purpose or beneficiaries of the *waqf*.]

36.4a. A house in *hubus*

When someone makes a house a *hubus*, it is used for the purpose to which he put it if it taken before he dies.

[The precondition is that the endower is entitled to dispose of his property of disposable by being one of the people who can dispose of his property and make gifts. He can make a *waqf* of a house, an animal and goods. [In the case of food, it has to be something which lasts for a long time, like wheat.] The precondition is that it is owned by the person who endows it, in itself or its use, and no one has a claim connected to it, and it is not something which it is not permitted to sell, like the skin of sacrifices and hunting dogs. It is used for the specific purpose for which it was endowed.

[Hashiyya: A *waqf* in money is questionable. There is a position that it is permitted because it lasts and can be replaced. The other position is that it is not permitted because its use lies in its consumption and a *waqf* must consist of something which will continue to exist. Lack of permission here can mean dislike or prohibition.]
If he designates a house as a *waqf* but does not specify the reason, it is used according to the common usages of the people of that land.

If its use is specified and taken, it is put to that use. If it is not taken before he dies or becomes bankrupt, the *waqf* is nullified. If it is not specific, like a mosque, it does not require a specific taking possession. When people are allowed to do the prayer, then *waqf* is valid.]

36.4b. Waqf for a minor son

If it is a *hubus* in favour of his minor son, he may hold it for him until he comes of age. He should rent it out for him and not live it in himself. If he continues to live in it until he dies, then the hubus is nullified.

[The end of possession is when the child comes of age provided that he knows that he is sensible. If the father continues to live in it until he dies or becomes bankrupt, then the waqf is nullified. This is when the son is free, not a slave.]

36.4c. When the original beneficiaries die out

If the beneficiaries of the *hubus* come to an end, the nearest of people to the founder on the day it reverts becomes the beneficiary.

[This is whether the founder is dead or alive. This is like when the founder has a full brother and a half brother by the father. The full brother dies, leaving a son and then the beneficiaries of the *waqf* come to an end. It reverts to the half brother rather than the son of the full brother. One considers who is the closest on the day it reverts, not he day it was founded because it may be that the relative who was distant on the day it was endowed will become near when the *waqf* reverts.]

36.5 LIFE GRANTS ('*UMRÂ*)

36.5a. Granting use for a person's lifetime

If someone gives a man the use of a house for his lifetime, it reverts to the owner when the person dies. It is the same if he gave the use to the children of the person and they die out. This is not the case with the *hubus*.

[If the owner has died, it reverts to his heirs. The reality of '*umra* in custom is that people of ShariÔa define it as the gift of the usufruct of a certain property for the lifetime of the donee or for his lifetime and that of his descendants, not the gift of a *ruqba* (which is the property for his lifetime). It does not have to be specific for the life of the donee. If it is limited to the life of the donee, it is also called '*umra*. This differs from the hubus which does not revert to the ownership of the owner when the beneficiaries die. A *hubus* remains a *waqf* for the closest relative of the beneficiaries. There is a difference because the *waqf* is ownership of the property and the '*umra* is ownership of the use.

36.5b. Death of donee and granter at the same time

If the one who granted the use dies on the same day, the property goes to his heirs on the day he dies.

[Ibn 'Umar said that it is possible that it means the day of making the '*umra*, and then it is the ownership of the property rather than the usufruct. It can refer to the death of the giver and then it is ownership of property and usufruct.]

36.6 More on Hubus

36.6a. Death of a beneficiary

If one of the people of the hubus dies, his share goes to the rest.

[Male or female or equal in this.]

36.6b. Those in need are preferred

People in need of lodging and revenue are preferred for the *hubus*.

[This is when the beneficiary is not specified, like saying that it is for the poor. Then the people of need and dependants are preferred to others for lodging and revenue according to ijtihad because that is the aim of the *waqfs*. If the beneficiaries are specified, then they are all equal, and the poor is not preferred to the wealthy.

[There is some disagreement in the School about whether the poor are preferred or not.]

36.6c. Evictions

If someone is resident, he should not be evicted for someone else unless that is a precondition in the hubus which is carried out.

[Even if the new person does not have a dwelling nor revenue, and even if the current tenant has become rich after he started to live there because the important thing is the need at the beginning, not one that is constant. There is no security that it will not come back. If other than the most needy came first and lived there and then he is evicted, then they will then be of equal need. So whoever lived there first is more entitled to stay. If, however, it is a term stipulated in the *waqf*, it is carried out.]

36.6d. A *waqf* is not sold

The *hubus* is never sold, even if it falls into ruins. If a horse which is a hubus becomes rabid, it is sold and the price used for another one like it or to help in paying for one. There is disagreement about replacing a ruined building with a building not ruined.

[When it becomes unusable, even if is not hoped to restore it. It is not permitted to sell its rubble. This is restricted to when the founder has not put a stipulation that it be sold. If he did so, than his stipulations are followed.

[There is a counter position which states that if leaving it will result in harm and there is no hope of restoring it, then it can be sold.]
There is an exception mentioned in the *Mukhtasar* about the amount which is needed to expand the mosque, i.e. the Jumu'a mosque, not any other mosque. Similar to the Jumu'a mosque are Muslim graveyards and roads because the use of the mosque, road and graveyard is greater than the use of the *waqf*. It is close to the aim of the founder. There is disagreement about exchanging for a price.

In the case of a horse, rabies is a form of madness which can infect a horse. If it is sold, then the price is used to buy another horse or given as sadaqa for jihad.

There is disagreement replacing a ruined building. Some of them take this literally as exchanging ruined property for unruined and giving it for

the unruined. Others say that the ruined property is sold and the price used to purchase what is sound and so what was *waqf* ceases to be *waqf* and what was not *waqf* becomes *waqf*.]

36.7 PLEDGES (*RAHN*)

36.7a. Legal status of pledges

The use of a pledge is permitted and it is only accomplished by possession of the article pledged.

[Pledges are permitted at home or on a journey. The journey is specified in the words of Allah, "*If you are on a journey and cannot find a writer, something can be left as a security*" (2:282) since that is when it is more common one cannot find a scribe to provide evidence. The Prophet, may Allah bless him and grant him peace,pledged his armour when he was in Madina. That indicates its permissibility while one is resident.

It would appear from what he says is that a pledge is valid before it is actually taken, and that is true, but it is only by actual possession that the pledgee has a special right to it rather than other creditors. Ibn al-Hajib said that if that is delayed until the bankruptcy or death of the pledger, it is agreed to be nullified.]

36.7b. Witnessing pledges

Testimony about possession is only useful if the witness actually saw possession take place.

[Ibn 'Umar said that this is when it is a distinct item and is handed over so that there is a transfer. When the pledge is not a distinct item and is not handed over, testimony is useful is they both confirm it (e.g. it might consist of certain palm trees).]

36.7c. Responsibility for the pledge

Responsibility for the pledge is that of the one who takes it if it is something which can be hidden. If it is something which cannot be hidden, he is not liable. The responsiblity for the fruit of palm trees in pledge is that of the pledger. The same is true for the revenue of houses.

[This is when he takes the pledge if it is not lodged with a trustee who takes it from the pledger. He is responsible for something which can be hidden, like jewellery, unless there is evidence that it has been destroyed, Then he is not liable. He is not liable for things like houses and gardens according to the well-known position. This is the case even if the pledgee were to stipulate that he is not liable for what can be concealed or the pledger were to stipulate that the pledgee is responsible for what is not hidden.

[Ibn al-Qasim says that the precondition is void because it is contrary to what is entrailed by the contract. Ashhab says that the precondition is binding.]
Someone who is suspect swears, "It is lost and I was not negligent nor destroy it. I did not misuse and I do not know where it is." The one who is not suspected only swears to lack of neglect in particular because it is not suspected that he has concealed it.

Responsibility for fruits is that of the pledger, whether the fruits exist or not at the time of the pledge and whether they are pollinated or not, unless the pledgee stipulates that it included. The same applies to revenue of houses. That is the responsibility of the pledger in the well-known position unless the pledgee stipulates that he has that.]

36.7d. Children of a slavegirl in pledge

If a slavegirl bears a child while she is acting as a pledge, her child is also a pledge. The possessions of a slave do not go into pledge with him unless that is stipulated.

[If he stipulates that the child is not part of the pledge, that is not permitted and the pledge is invalid.

In the case of the possessions of a slave, whether they are known or unknown.]

36.7e. Responsibility for the pledge if destroyed

If the pledge is destroyed in the possession of a trustee, it is the responsibility of the pledger.

[If it can be hidden. It is not the liability of the trustee because there is no liability for the trustee.]

36.8. The 'Ariyya (Loan for temporary use)

The *'ariyya* is assigned for a time. The borrower is responsible for what is can be hidden, but not for what cannot be hidden, like a slave or a riding animal, unless he misuses it.

[Ibn al-Hajib defines it as transfer of ownership of the usufruct of a specific thing without compensation. It is recommended, and even more so in the case of relatives, neighbours and friends. Its basis in the Book is the words of Allah Almighty, "*Do good, so that perhaps you may be successful*" (22:75) and in hadith, the Prophet, may Allah bless him and grant him peace, borrowed some armour from Safwan* and he asked, "Is it misappropriation, Muhammad?" He said, "Rather it is a guaranteed *'ariyya*."

He explains the question of liability in the *'ariyya*. The borrower is liable for something which can be hidden unless there is evidence of its destruction. Then, in the well-known position, he is not liable because liability is based on suspicion which is removed by evidence. In the case of things which cannot be hidden, Ibn 'Umar says that he must take an oath, whether he is suspect or not. If the lender stipulates the borrower's

liability, that is of no use. It is the same if the borrower stipulates to the lender lack of liability in that for which there is liability. That is of no use and he is liable according to one of the positions of Ibn al-Qasim and Ashhab. They also say that it is effective and one acts by the preconditions because the '*ariyya* is a known topic, i.e. there is no liability in the known.

The exception to lack of liability is when the borrower abuses it and then he is liable. There are many types of abuse, including increasing the load and increasing the distance. He is also liable in another case, which is when it is clear that he is lies as when he says that it was destroyed in a certain place and none of his companions heard that it was destroyed.]

[*Safwan ibn Umayya who was still an unbeliever at that time.]

36.9 DEPOSITS (*WADÎ'A*)

[Deposit (*wadî'a*) comes from *wada'a*, which is "to leave". The Almighty says, "*Your Lord has not abandoned you nor does He hate you*." (93:3) i.e. not abandoned His custom of being good in revelation to you. In technical usage it is property which is entrusted to someone's keeping and which must be returned whenever the owner asks for it without excuse. He is believed about returning it to the depositor unless there was evidence in that and then he is only free by clear proof of that.]

36.9a. Statements about the deposit

If someone given a deposit says, "I have returned the deposit to you," he is believed unless he received it in the presence of witnesses. If he says, "It has disappeared," he is believed in any case. In the case of an 'ariyya, however, he is not believed about its destruction if it is something which can be concealed.

[If there were witnesses to his taking it, he is only believed when there are witnesses to its collection as his trust was not enough. Evidence must be intended for ensuring security. Witnessing is only considered when he says someone along the lines of "Bear witness that I have deposited such-and-such with him." It appears from his words, "He is believed" that he does not have to take an oath. They derive from the *Mudawwana* that he must take an oath.

When he says that the item is destroyed, he is believed whether there was testimony or not. The one under suspicion rather than others swears an oath in the well-known position. It is said that both the one who is suspect and others swear. Ibn 'Umar stated that and at-Tata'i said it. He repeats the point about the *'ariyya* to differentiate it from the deposit.]

36.9b. Abuse of a deposit

If someone abuses a deposit, he is liable for it. If it was dinars, which he returns to their original bag and then they are lost, there is disagreement about whether he is liable for them.

[There are many things that comprise abuse, including putting it with someone else without an excuse, while on a journey or resident. Another is travelling with it without excuse and using it so that it is destroyed. He indicates this here.

If it is dinars or dirhams which were tied or sealed and he lends them or part of them and then returns the same amount to the bag and then they are destroyed, it is said that he is liable because he misused by opening them. It is said that he is not liable. That is the position of Ibn a-Qasim and others. It is well known. It states in *at-Tawdih*, "He owes it and it only believed with an oath."]

36.9c. Trading with a deposit

It is disliked for someone to trade with something deposited with him. If he does so with money, the profit is his. If the deposit was goods and he sells them, the owner can choose between taking the price or the value on the day he infringed.

[He has any profit or any loss because he is responsible. It is disliked to do so, even if it is the deposit is money. Al-Aqfashi said that. If the goods no longer exist, the owner has a choice between taking the price for which they were sold or their value on the day he sold them. If they are still present, he can choose between cancelling the sale and taking back his goods, or taking the price for which they were sold.]

36.10. FOUND PROPERTY

36.10a. Announcing the article which has been found

If someone finds something, he must announce it for a year in a place where it is hoped that it will be recognised. If, after a year, no one comes forward, he can make it a *hubus* or give it away as *sadaqa*. If he does that, he is responsible for it if its owner should then come forward.

[It is mandatory to announce it immediately. If he delays until it is lost and then its master comes, he is liable for it. At-Tata'i said that. It is mandatory to describe it since the Prophet, may Allah bless him and grant him peace, commanded that. In the *Muwatta'* it states that a man came to the Messenger of Allah, may Allah bless him and grant him peace, and asked him about an item which is found. He said, "Publicise its purse and its strap. Then publicise it for a a year." Publicising it for a year is applies if the item is large. As for something insignificant to which one pays no attention, which is less than the legal dirham, as Abu'l-Hasan, the commentator of the *Mudawwana*, said, it is not publicised. What is more insignificant and less than a lot is publicised

for some days if someone might look for it. As for what will go bad by delay, like fruit, it is for the finder and he does not announce it.

The announcement is made in a place where that will achieve a result, and it is in the place in which he found it. When he announces it, he does not mention its category, but mentions it in a general manner, saying, "Who has lost something?"

If he then gives it away as *sadaqa*, it is on his behalf or on behalf of its owner.]

36.10b. Using the article

If the finder makes use of it, he is responsible for it. If it is destroyed before or after the year is up without action on his part, he is not responsible.

[He is responsible if it is destroyed. If he does not destroy it, he must pay its rent to its owner if it is like something which is rented, like animals. If he did not do anything to abuse it, even permitted action, as when it is fodder, he is not liable because it is a trust with him.]

36.10c. Claiming the article

If the claimant recognises the purse and the strap, he may take it.

[It would appear that both matters must exist. That is not the case, because one of them is enough because he may have forgotten the other. It also appears that knowing the number of dinars and dirhams is not a precondition, and that is true according to Asbagh. Ibn al-Qasim and Ashhab consider that. Revenue from the item during the period of publicising it belongs to the finder. [Revenue can be milk, butter, cheese and the like.]]

36.10d. Lost animals

A man may not claim a stray camel in the desert, but he can take a sheep and eat it if it is found in uninhabited wasteland.

[*Hashiyyat*: This is when the camel is safe from wild animals and thieves. Then he can take, although it is also stated that he does not take it in any case.]
[Horses and donkeys are not the same category as lost camels: they are part of lost articles. If he finds them, he takes them. An uninhabited area is like a desert.

He is not liable or eating a sheep in the desert or uninhabited area, but if he brings to an inhabited area alive, he must announce it because then it becomes like a found article.]

36.11 COMPENSATION FOR CONSUMPTION OF ANOTHER'S PROPERTY

If someone consumes merchandise, then he owes their value. If the goods are weighed or measured, he owes the equivalent.

[This is the well-known position. Opposite it is what al-Baji reported from Malik that he has a position which states that all damages are replaced with their equivalent, as is stated by Abu Hanifa and ash-Shafi'i. According to the well-known position, one considers the price and the place of the consumption, whether intentional or accidental. Intentional and accidental are the same in respect to people's property.

If it is weighed, measured or counted things which are not differentiated, like eggs, he owes the equivalent in the place where he consumed it.]

[If the amount is undetermined, he is liable for the value of a heap of it.]

36.12 MISAPPROPRIATION (*GHASB*)

[This is the final topic of this chapter. Ghasb in technical terms is to take property by force by encroachment without banditry. Its is forbidden because of what has come about in the ayats of the Qur'an and the hadiths of the Prophet, may Allah bless him and grant him peace. Among the ayats is, "*Allah does not love those who go beyond the limits*." (2:190) There is the hadith in the two *Sahih* collections where the Prophet, may Allah bless him and grant him peace, said, "No one unjustly takes a piece of land measuring a hand's width but that Allah will encircle him down to seven earths on the Day of Rising."

One of its rulings is liability as he indicates here.]

36.12a A misappropriater is liable

A misappropriater is liable for what he misappropriated. If he returns it in its original state, he owes nothing. If it has changed while in his possession then the owner can choose between taking it with the defect or making him liable for its price.

[Al-Qirafi said, "The term misappropriater applies to every human who is Muslim or a dhimmi since the Prophet, may Allah bless him and grant him peace, said 'The hand owes what takes until it returns it,' i.e. obliged to return it if it exists, or its price or equivalent if it is gone."

The well-known position is that liability takes note of the state of the misappropriation. If it is returned unchanged, he owes nothing. He is obliged discipline, repentance and asking forgiveness for the wrong action. If it is changed in a negative way by something divine, the owner can take it as it is with its defect without a fine or be paid the price on the day he took it.]

36.12b. When he has caused the damage

If the loss was due to his misuse, the owner has a choice between taking it and taking it with compensation for the damage. There is a difference of opinion about that.

[Al-Fakhani said, "Or he is liable for the price on the day he misused it. It is reported from Ashhab and one position of Ibn al-Qasim that he can take the price or take it imperfect with nothing with it. This is the source of the disagreement.]

36.12c. Income from usurped property

The misappropriater has no right to the revenue and must return what he consumed of the revenue or pay for any use he had from what he took. If he has intercourse with a slavegirl he takes, then he is subject to the *hadd*-punishment and his child is a slave of her owner.

[It is clear that it is mandatory to return the revenue absolutely, whether land, animals, slaves or other things, and that is the position of Ashhab and Ibn Ziyad from Malik. Al-Fakhani said that the literal text of the book specifies responsibility for the revenue of land rather than slaves and animals, and that is the position of Ibn al-Qasim in the *Mudawwana*.

If he has intercourse with a slavegirl he has wrongly taken, he is subject to the hadd if fornication is established by evidence or confession because it was unlawful intercourse with no quasi-legal justification. The child belongs to the owner because every child, from fornication or marriage, follows its mother in respect of ownership.]

36.12d. Past revenue

The usurper of property has no right to its profit up until the time he returns it to the owner. Some of the people of Malik prefer that he give it away as *sadaqa*. There is something about this in the chapter on judgements.

[Al-Fakhani said that when he misappropriates some money and trades with it and it increases in his possession and it is connected to his responsibility, the profit is his as the liability is his, but it is disliked since it comes from property to whose use the owner did not consent. When he returns the capital as it was and is allowed it by the owner, that is permitted for him when the owner is agreeable about it. Imam Ashhab recommended that he give it as sadaqa to expiate what he committed of the wrong action of misappropriation based on what the Prophet, may Allah bless him and grant him peace, said, "*Sadaqa* extinguishes errors as water extinguishes fire."

There is something about misappropriation in the next chapter on judgements.]

CHAPTER 37. JUDGEMENTS ON HOMICIDE AND *HADD*-PUNISHMENTS

This chapter deals with reprisal (*qawd*), blood money, retaliation (*qisas*) and related topics, like the *ghurra* (slave paid in compensation).

[*Hashiyya*: *Qisas* concerns retaliation for limbs and *qawd* is retaliation for loss of life.]
This chapter also deals with the crimes which result in the *hadd* punishments, like illicit sex, slander, drinking, and theft. *Hadd* means prohibition, and legally is what is imposed to prevent the criminal from reverting to the like of he did and to deter others.

[*Hashiyya*: The chapter also deals with its legal consequences, like exile, and its size. *Ta'zir* (discretionary punishment) is also dealt with. The *hudud* are deterrents to protect loss of sanity, life, religion, honour and property, and lineage. *Qisas* (retaliation) protects lives. Amputation for theft protects property. The *hadd* for illicit sex protects lineage. The *hadd* for drinking protects minds. The *hadd* for slander protects honour. Execution for apostasy protects religion. It is said that the *hudud* are expiations, which is sound.]

I. RETALIATION FOR HOMICIDE

37.1 CONVICTION FOR HOMICIDE

37.1a. Necessary evidence

No one may be killed for homicide except on the basis of just evidence, confession, or by the *qasama* when that is necessary.

[A life is only taken for another life equal in freedom, Islam and protection when the killing has been proven by one of three matters. The

first is evidence, the second confession and the third is the *qasama* oath. There are certain preconditions in the killing which will be dealt with.

[*Hashiyya*: A consequence of equality is that a free man is not killed for a slave nor a Muslim for a non-Muslim because the higher is not killed for the lower. As for protection, a *harbi* is not entitled to retaliation since he is not safe from being killed. This, of course, is as long as the person is not killed for financial gain. In such a case, the higher is killed for the lower. The criminal in this case must be one with legal responsibility (adult, sane), intend the blow, and the victim must have protection, either by Islam, safe conduct, or *jizya*. Retaliation is not carried out on a child or mad person or someone who errs nor someone who kills someone with no protection.

[For evidence, the minimum is two men. Homicide which obliges retaliation is not established by one man and two women. The right to blood money, however, is established by that. In *al-Jawahir*, it states that the precondition for the validity of the testimony is agreement about the description of the killing. If the two witnesses differ in their description, as when one says that he slaughtered him and the other that he burned or wounded him, and the accused denied what they say and the relatives claim both, there is no entitlement to his life. If they swear the *qasama* to one version, the testimony of one is cancelled since the accused and the relatives agree that it was untrue. Confession is when the accused make a voluntary confession without being forced to do so.]
The *qasama* can be obliged when the killer in sane, adult and equal to the victim in respect of *deen* and freedom and is not his father, and the relatives agree on killing. The oath is taken by two or more. Furthermore, there is suspicion, i.e. circumstances which strengthen the claimant's side and it is probable that he is telling the truth, as when a reputable person sees the victim in his blood and the accused to close to him with the trace of killing on him, as he is stained in his blood and the knife in his hand.]

37.1b. Form of the *qasama*

The form that the qasama takes is that the relatives [of the victim] swear fifty oaths and then they are entitled to take the life of the accused. If it was premeditated murder, then the minimum required is that two men swear the oaths. More than one man is not put to death as a result of the *qasama*.

[The relatives, who must be '*asaba* (paternal relatives) of the victim, whether they are his heirs or not, swear the oaths. If there are fifty of them, they each swear one oath: "By Allah. There is no god but Him. So-and-so killed him or he died from the blow he struck." According to the *Muwatta*', then they are entitled to the life of the accused. In premeditated murder, not less than two men of the '*asaba* must swear in case of inadequate evidence, and that takes the place of evidence. As the testimony of one man is not enough for evidence, it the same applies here. One is not enough.

[*Hashiyya*: If there are no '*asaba* by lineage, then the '*asaba* by clientage swear. The *qasama* obliges retaliation if it was deliberate and blood money if it was accidental. The oaths are sworn one after another and then they are entitled to his life. The Prophet, may Allah bless him and grant him peace, said, "Will you swear fifty oaths so that you will be entitled to the blood of your companion?"]
If a group are accused of homicide, and there is a *qasama*, it is said that the *qasama* is against one man, and it is said that it is against the entire group and then they choose one of them to execute.

[*Hashiyya*: When a group deliberately kills someone acting together out of aggression and he dies immediately or is mortally wounded, and the actions of each of the group cannot be distinguished and it is unclear which was the mortal injury or all the injuries led to death, then they are all killed without the *qasama*. In other words, the murder is established by evidence or confession. If the *qasama* is required, then only someone

directly connected to the murder is killed when the blow was not immediately. Then only one is killed through the *qasama* process. When this happens, the rest are given a hundred lashes and imprisoned for a year.]

37.1c. When the *qasama* is necessitated

***Qasama* is obliged by the statement of the dying man, "So-and-so killed me" or there is a witness to the killing, or two witnesses to the wounding if he then survives long enough afterwards to eat and drink.**

[In the first case, Malik and all his people do not disagree that it is suspicion of deliberate murder which obliges the *qasama* and retaliation. The same applies to a single eye-witness to the killing, when he is reputable. The relatives swear with his testimony and they are entitled to his life.

[*Hashiyya*: This is when the victim who makes the statement is adult, free, Muslim and sane. There is disagreement about accidental killing. The well-known position is that the relatives take the qasama and are entitled to blood money. It is said that there is no *qasama* in that because it is a financial claim, and that is reported from Malik.
As for the witness to the killing, it would appear from the wording that the witness can be reputable or not, and this is reported from Malik. The well-known position is that that does not constitute suspicion because his testimony is omitted legally. Two women are like one man in this. Death also has to established for the process to continue.]
There is also the case where two witnesses testify to seeing the injury, meaning the blow, or the blow. That is also considered suspicion when there is testimony of one reputable eye-witness to the injury or the blow, deliberate or accidental, according to the statement of the victim, "So-and-so wounded me, or hit me." Then the relatives take the *qasama*,

swearing that he died of that wound or blow. If he dies immediately or is struck a mortal blow, he is killed for him without *qasama*. "Eating and drinking" is not meant literally, but refers to a delay after eye-witness of the wounding or blow, for a day or more, even if the victim does not eat or drink.]

37.1d. When the claimants refuse to swear

If those who claim blood refuse to swear, then the one accused must swear fifty oaths. If he cannot find those among his relatives who will swear with him, then the accused himself swears fifty oaths. If a group are accused of murder, then each of them must swear fifty oaths.

[If all or some of them refuse to take the oath for the deliberate killing when the *qasama* is obliged by the statement of the victim or a witness to the killing, then the suspect swears with them. If the accused swears fifty oaths, then he is innocent. If he refuses, he is imprisoned until he swears and he is not released from prison unless he swears.

[*Hashiyya*: This is when the relatives of the deceased are the same degree in lineage or closer than others, as when the son refuses when the uncle is present. Such a refusal is not considered if the one who refuses has a more distant degree, as when an uncle refuses when the brother is present.]

In the case of an accused group, each swears fifty oaths and is only innocent by swearing fifty oaths.

37.1d. Fifty oaths

When the relatives seek blood, fifty men swear fifty oaths. If they are less than that, the oaths are divided between them. A woman does not swear in a case of premediated murder.

[Al-Aqfahasi said, "This is the position of 'Abdu'l-Malik. It is that it is not permitted for only two to swear when there are more present. If there are less than fifty, then the oaths are divided between them. If there are two then each swears 25 oaths." If there are more than fifty, then fifty of them satisfy the requirement.

A woman does not swear in a caseof wilful killing, whether or not there is a male with her because being male is a precondition to the entitlement to taking blood by the *qasama*. If there are only women, then the victim becomes like someone with no heirs and the accused must swear the oaths to clear himself.

[If the accused then refuses to swear, he is imprisoned until he does so.]

37.1e. Accidental homicide

In the case of an accidental homicide, the heirs, male or female, swear according to what they inherit of the blood money. If the division of the oaths is uneven, then the one with the largest share swears the remaining oath.

[In the case of two, each swear twenty-five oaths. In three, each swear 16 and two-thirds oaths, so each mends the shortfall which goes to his portion and so they each swear 17 oaths. If the division is uneven and, for instance, there is a son and a daughter, the factor is three and the male swears 33 and a third and the female 16 and two-thirds, and so the female has the larger fraction and so the daughter swears 16 oaths.]

37.1f. Oaths of heirs is a precondition

When some of the heirs are present swear to gain the blood money on account of accidental killing, they must swear all the oaths. Then those after them later swear according to their shares of the inheritance.

[The oaths must total fifty in Malik's view. Otherwise they are not entitled to any of the blood money. When those who were absent at the time of the swearing arrive later, then they swear and the oaths of those present before them is not sufficient. Al-Fakhani said that that is because part of the precondition of taking this property is to have the oaths. When the one who is present swears, he is entitled to his share of it, and any heir who comes later must swear according to his portion of the oaths and then he takes his share. He does no swear all since the earlier swore all the oaths.]

37.1g. Manner of swearing

They swear the oaths while standing. People living in the provinces of Makka, Madina or Jerusalem should be brought to those places to perform the *qasama*. People of other provinces are not summoned to their provincial centre unless they are a short distance from it.

[This description of taking oath applies to the *qasama* and to oaths sworn for financial rights. In the well-known position, it is done standing to deter them lest falsehood refute truth.

[*Hashiyya*: There are two views about what happens if they refuse to swear standing. Ibn al-Majishun says that it can be done while sitting. Standing, however, is the well-known position of the School, and refusing to do so nullifies the right to blood money.]
The apparent meaning of the text is that the time is not made hard for them, but the place is.

The meaning of provinces is that those who are subject to those locations are summoned to those places for the qasama to make it hard for them, even if there is a great distance between them and these places, like ten days, because that will deter the liar because of the nobility of the site. That only applies to these three places. What constitutes a short

distance varies in definition. Some say three days and some say ten days.]

37.1h. Not swearing for wounds

There is no *qasama* in the case of wounds, nor for slaves, or one of the People of the Book, nor if the body is found between the battle lines or found in the quarter of people.

[This is when someone wounds someone else and has no evidence. There is no *qasama*. There is retaliation for deliberate wounding and blood money for the accidental, i.e. when there are two witnesses, there is blood money for the accidental and retaliation for the deliberate. If there is only one witness, he swears one oath with the witness and takes the blood money for the accidental injury and retaliation for the deliberate [when there is equality]. If the claimant does not swear, the wounder is free if he swears an oath. Otherwise he is imprisoned for the deliberate wound and indebted for the accidental.

There is no *qasama* for killing a slave because he has a lower rank than the free. When it is established that a person killed him by two witnesses, he is liable for his price, whether intentional or accidental, whatever it is, and he receives a hundred lashes and is imprisoned for a year.

There is no *qasama* between People of the Book. This does not mean if the killer and victim are both unbelievers. What is meant is when a *dhimmi* is found dying and says, "I was killed by so-and-so," who is a Muslim, and two reputable men witness his statement, there is no *qasama* for him. He owes his blood money from his own property if it was deliberate and the '*aqila* (tribe) pay if it was accidental. If there is only the claim of a relative of the unbeliever against a Muslim , one pays no attention to it.

There is no *qasama* for someone found between battle lines of Muslims when the two groups are following their interpretation since each group believes it is permitted to kill the other since he takes its money, for instance, and one of them dies, his blood has no legal consequence.

There is no *qasama* a victim is found in the quarter of a people, and the place where the victim was found was one where people other than the people who live there pass through it. If other than its people do not pass through it and a murder victim is found is from other than its people. That constitutes inadequate evidence.]

37.2 PARDON

37.2a. No pardon in murder for gain

There is no pardon in the case of murder done for financial gain.

[When someone kills a person in order to take his property, then it is not permitted to pardon him, or there is no pardon which is effective, even if the victim was an unbeliever and the killer a free Muslim because killing in this way is hiraba (aggravated robbery) and when the robber kills, he must be killed, even if it is for a slave or an unbeliever. Pardon is not permitted in this because it is the right of Allah. According to this, he is killed by a hadd punishment, not retaliation.]

[*Hashiyya*: Pardon in this case cannot be issued by the victim, relatives or ruler, even if the victim is an unbeliever, because this is a right of Allah and pardon is not permitted in it.]

37.2b. The victim pardoning his killer

A man may pardon his murderer if he was not killed for financial gain. He may pardon for accidental killing from the disposable third of his state.

[This is when he pardons after he has been dealt a mortal blow, and then the relatives cannot say anything. If it is accidental, that has to come from the third because of the blood money is part of his property and the heirs can forbid him to dispose of more than a third because his financial dealings are restricted while he is in this condition.]

37.2c. Pardon granted by the heirs

If one of the sons of the victim pardons, then the killer is not killed, but the other heirs still receive their shares of the blood money. Daughters cannot pardon when there are sons.

[This is once the right to blood has been established and the son is an adult. The killer is not killed because blood cannot be divided. If part of it is cancelled, it is all cancelled. When one of the sons cancels killing or forgoes his share, the other sons still are entitled to their shares of the blood money. When there are sons, daughters do not pardon, nor do sisters pardon when there are brothers. Pardon and taking in full is a right of the '*asaba* (male paternal relatives) rather than that of the females equal with them.]

37.2d. Punishment of a pardoned murderer

Someone who is pardoned for wilful killing receives a hundred lashes and is imprisoned for a year.

[This also applies when retaliation cannot be carried out on the killer because of lack of equality, as when a Muslim kills an unbeliever. This punishment was carried out by the Salaf, may Allah be pleased with all of them.]

II. BLOOD MONEY

37.3. THE TARIFF FOR BLOOD MONEY (*DIYA*)

37.3a. The tariff for accidental homicide

The blood money for people with camels is one hundred camels. For those who use gold, it is one thousand dinars, and for those who use silver it is 12,000 dirhams.

[*Diya* is derived from *wadi*, which means destruction. Since it is obliged by death, it is called that. It is a technical term for the indemnity obliged by killing a human being in recompense for his blood. What is obliged in killing another can be called his value as what is obliged on account of killing a slave is his value. Blood money is obliged by the words of the Almighty, "*Anyone who kills a believer by mistake should free a believing slave and pay blood-money to his family.*" (4:91)

[In the *Muwatta*', the Prophet, peace and blessings be upon him, is reported as stating that blood money is "one hundred camels for a life." There is consensus on that.]
It varies according to the perpetuator. People with camels are nomads and tent people. It is 100 camels taken from five categories. People of gold are like the people of Egypt and Syria, and people of silver are like the people of Iraq. His words imply that blood money is only from these three categories, and that is the case in the well-known position. It is not taken from cattle nor sheep nor goods.]

[*Hashiyya*: If, however, both parties agree on something else, it satisfies the requirement. Those who oppose the well-known position and allow cattle and the like, say that it is 200 head of cattle and 1000 sheep. Malik said in the *Muwatta*', "The generally agreed on way of doing things in our community is that camels are not accepted from the people of cities for blood-money nor is gold or silver accepted from desert people. Silver is not accepted from the people of gold and gold is not accepted from the people of silver."]

37.3b. The tariff for wilful killing

The blood money for murder, if accepted, in camels is 25 four year old she-camels, 25 five year old she-camels, 25 three year old she camels and 25 two year old she-camels The blood money for accidental homicide is 20 of each type and 20 male three year old camels.

[If blood money is accepted or retaliation impossible due to the disparity, then the camels consist of these four types: 25 which are *hiqqa*, 25 which are *jadha'a,* 25 which are *bint labûn*, and 25 which are *bint makhâd*. In the case of the accidental killing, there are twenty of each of the four categories, as well as twenty three-year old male camels (*ibn labûn*). The blood money for intentional killing has less categories than the accidental killing, even thought the number is the same.

[Male camels are less valuable than female ones.]

37.3c. When a father kills his son

The blood money is made more exacting in the case a father who kills his son by throwing a piece of iron at him and killing him. He is not put to death for his death, but he must pay 30 five year old she-camels, 30 four year old she-camels and 40 *khalifas*, which are pregnant camels. It is said that the '*aqila* [the tribe] pay that and it is also said that it comes from his own property.

[This includes anything which he does without the intention to kill him. He is not executed because of the respect for fatherhood. If circumstances indicate the he actually intended to kill him, then he is killed for him in the well-known position.

[Ashhab takes the position of Abu Hanifa and ash-Shafi'i that the father is not killed for his son because he was the reason for his existence. Included in this judgement are mothers and grandparents.]
There is disagreement about who pays the blood money. The well-known position is that the killer, father or anyone else, pays it immediately and it is not delayed. If he has property at that time, it is taken from him. Otherwise it awaits his wealth. It is said that this heavier blood money is owed by the '*aqila* (tribe). Ibn al-'Arabi says that it is the tribe which pays the blood money. It is said that it comes out of his own property if he has property. If he does not, then the tribe pays it.]

37.4. The Tariff For Other Than Muslim Men

37.4a. Half the tariff

The blood money of a woman is half that of a man. The same applies to the blood money of Kitabis, and their women is half of that of their men.

[The blood money of a free Muslim woman is half that of a free Muslim man. So her blood money is fifty camels, in fourths or fifths according to whether the killing is accidental or deliberate. The more severe form [if the victim is a daughter] is 2/3rds of 16 and a third of camels from every type. In money, it is 500 gold dinars and 6000 silver dirhams.

The same is true for the Jews and Christians. It is half that of the Muslims based on what an-Nasa'i reports that the Prophet, may Allah bless him and grant him peace, said, "The blood wit of the people of the *dhimma* is half that of the Muslims. There is half of that blood money for Kitabi women.]

37.4b. Magians

A Magian's blood money is 800 dirhams and that of their women half of that. The same principle applies to penalties for wounds.

[A Magian, who is not a Kitabi, has this amount in silver and in gold it is 66 dinars and in camels, 6 and two-thirds in camels. Their women have half of that. The same portion applies to wounds.]

37.5 BLOOD MONEY FOR MUTILATION

37.5a. Full blood money for hands, feet and eyes

There is full blood money for loss of both hands or feet or eyes, and it is half for the loss of one of them.

[The full money is for the loss of both. There is half for loss of one. Ibn 'Umar said, "This is for accidental wounding. When it is deliberate, retaliation can be taken from the criminal."]

37.5b. Full blood money

There is full blood money due for cutting the cartilage of the nose, causing loss of hearing, causing loss of mental understanding, breaking the back, crushing the testicles, cutting off the penis, and cutting off of the tongue or damaging it so that the victim cannot speak. There is full blood money due for destroying the breasts of a woman or for causing the loss of the eye of someone with one eye.

[If only part of the nose is cut, then it is calculated according to the damage. There is full blood money for causing loss of hearing. If it only one ear, then it is half, even if he only hears by it. When his mental faculties are impaired because a blow, there is full blood money. When his mental faculties is impaired by the amputation of his hands, he is

owed double blood money. If both testicles and penis are cut off, double blood money is owed.

[The is half blood money for one testicle.]
In the case of the tongue, if someone cuts off part of it by which one speaks and he cannot speak, that entails full blood money because the tongue is for speech, not touching. There is discretion (*hukuma*) on any other part of the tongue. *Hukuma* means that the one evaluates the victim like a sound slave. If a sound slave is worth ten, for instance, then after the injury is estimated at nine, the difference is a tenth, and so a tenth of the blood money is demanded.

There is full blood money for the breasts of a woman, whether the cutting is partial or total. There is full blood money for the loss of the single eye of a one-eyed person when that is accidental. If it is deliberate, that will be mentioned.]

37.6. Tariff For Lesser Wounds

37.6a. The *mudiha* and loss of fingers and toes

For a *mudiha* wound, which is a head wound which exposes the skull, the penalty is five camels. There is the same amount for loss of a tooth. There are ten camels due for the loss of each finger or toe, and three and a third for the tips of fingers and toes, and five camels for the tips of the thumb or big toe.

[These amounts are for accidental wounds. There is retaliation for deliberate wounding. In the case of loss of a tooth, that also applies if it becomes very disordered (and turns black or is discoloured), and whether it is from the front or the back. In the case of tips of fingers, a finger has three parts, and there is a third of each part. Again, this is in the case of accidental injury. There is retaliation for the deliberate wounding.]

37.6b. Other wounds

There is fifteen per cent for a *munaqqila* wound. The *mudiha* is a head wound which exposes the bone and the *munaqqila* is one affects the skull, but does not reach the brain. If it reaches the brain it is a *ma'muma* wound, and there is a third of the blood money for it. The same holds for *ja'ifa* (abdominal) wound.

[Fifteen per cent is 15 camels and intentional and accidental injuries are the same in it and there is no retaliation in such a wound since it can prove lethal.

[Fifteen per cent is 150 dinars or 1800 dirhams.]
The *mudiha* exposes the bone and removes the skin and flesh which covers it. It is only on the head, forehead and cheeks. A wound is *mudiha* if it exposes the amount of a needle of the bone.

A *munaqqila* wound is one which chips the bone but which does not reach the brain. Any wound which reaches the brain, even the amount of a needle, while there still remains a thin membrane on the brain which, if removed, would result in death, is called a *ma'muna*. It is only on the head or forehead. There a third of the blood money for it, which is 33 1/3 camels, or 333 dinars or 4000 dirhams.

A *ja'ifa* wound is one which reaches the gut and it is only in the back or abdomen. It obliges a third of the blood money.]

37.6c. Lesser wounds

One exercises *ijtihad* (discretion) in the case of a wound less than a *mudiha* and in the case of other wounds.

[Cases whose amounts are not specified by the Shari'a are decided by judicial determination (*hukuma*). It is that one estimates the decrease in the value of a sound slave after receiving such a wound. For instance, if

the slave was worth ten on the day of the injury and afterwards is worth nine, there is a tenth of the blood money owed. It is the same in a wound less than *a ja'ifa* wound which is accidental. There is only *hukuma*.]

37.6d. Waiting for the wound to heal

The blood money for a wound is only paid after it has healed. If a wound less than a mudiha heals without leaving a scar, there is no compensation for it.

[It is only paid after it heals because it is not known whether full money is obliged for it or not. Similarly, there is no retaliation taken until after the wound has healed. Al-Aqfahasi said that. If it leaves no scar and is less than a *mudiha* or a *ja'ifa*, there is no blood money. What is understood from what he says is that there is something for something which heals with a scar, and that is based on the principle of *hukuma* as already explained.

37.7. RETALIATION (*QISAS*)

There is retaliation for deliberate wounds, unless such a wound may prove fatal, such as a *ma'muna*, *ja'ifa*, and *munaqqila*, or breaking a thigh, crushing the testicles, breaking the back, and such injuries. Blood money is paid for such injuries.

[In the case of wounds which would probably lead to death quickly, like crushing the testicles, breaking the breast bone and breaking the back, blood money is paid for an intentional injury, i.e. blood money is calculated in it. The blood money is paid in full if the injury demands full blood money, like breaking the breastbone, neck or back, or a third or a tenth or a twentieth as was made clear.

[*Hashiyya*: In the case of deliberate injury, the Qadi must discipline the perpetrator, whether or not retaliation is taken.]

37.8. THE CLAN'S OBLIGATION IN THE BLOOD MONEY

37.8a. Responsibility for the accidental, not the wilful

The '*aqila* (tribe) do not have to pay for deliberate murder nor for homicide based on confession. They can pay for accidental injuries if the amount is a third or more of the full blood money. Amounts less than a third are paid by the perpetrator from his own property.

[They do not have to pay the blood money for intentional killing in which retaliation is cancelled by pardon or anything else which cancels it. Then it is immediately due from the property of the perpetrator. The Ôaqila do not have to pay for the accidental which is based on confession, and the perpetrator must pay it himself because of possible collusion between the killer and the relatives of the victim.

The '*aqila* are called that because they pay ('*aqila*) the blood money for him.]

37.8b. Major wounds and the '*aqila*

As for a deliberate *ma'muna* or *ja'ifa* wound, Malik said that the blood money paid by the tribe ('*aqila*). He also said that it is said that it is paid from his property unless the perpetrator is without money. Then the '*aqila* pay it because there is no retaliation in the case of such wounds when they are deliberate. It is the same with penalties which reach a third of the blood money when there is no retaliation because that might prove fatal.

[The first is the well-known position. Retaliation is not taken when it might result in death.]

37.8c. The clan does not pay for a suicide

The 'aqila does not pay anything for someone who kills himself either deliberately or accidentally.

[It is blood with no consequence since the Prophet said, "Whoever kills a believer accidentally.." and so the blood money is obliged for the one who kills someone else. That indicates that it is not obliged when someone kills himself.]

37.9. Blood money paid to a woman

A woman is paid the same compensation as the man up to a third of the blood money of a man. If compensation reaches a third, it reverts to her portion of the blood money (which is half).

[Up to a third is taken for things like her limbs as it is for the man with the same amount as that for a man. When the amount is more than a third, the tariff reverts to the blood money of women. When three of her fingers are severed, she is owed 30 camels since compensation is equal to a man in what is less than a third of his blood money. When four of her fingers are cut, she has 20 camels because if they were equal, she would be obliged forty and that is more than a third, and so it reverts to half of what is obliged for a man, which is 20. The people of Madina and the seven fuqaha' agree on that.]

37.10 Cases Where The Parties Are Unequal

37.10a. Murder by a group

When a group murder a man, they are all killed for his murder.

[Linguistically a group is from 3 to 10, but for the fuqaha', it is simply a group. They are all killed if they colluded to kill him.

[*Hashiyya*: It makes no difference between they participated in the actual deed or only some did it while the others were present. It is the same if the victim was a woman.]]

37.10b. Murder by someone drunk or insane

If a drunk kills, he is killed. If a madman kills, his tribe pay the blood money.

[Someone drunk by drinking what is forbidden, like wine, knowing that it forbidden but deliberately drinks it. That is because he voluntarily becomes drunk and so has no excuse. If he becomes intoxicated from medicine, then he has an excuse. This is when he kills someone protected who is his equal or higher.

The mad person is one who does not recover. The *'aqila* pay his blood money when it reaches a third.]

[It is the same when he has bouts of insanity and kills someone in one of those bouts. If he kills someone in a period of sanity and then goes mad, he is executed when he regains his sanity.]

37.10c. Minors

The deliberate injury inflicted by a minor is the same as an accidental one. It is paid by the 'aqila if it is a third of the blood money or more. Otherwise it comes from his own property.

[There is no retaliation taken from a minor.]

37.10d. When the victim is of the opposite sex

A woman is killed for a man and a man for a woman. Retaliation is exacted from each for wounds.

[There is agreement about a woman being killed for a man. The majority say that a man is killed for a woman since Allah says, "*We prescribed in it for them: a life for a life,*" (5:47) and that abrogates His words, "*free man for free man.*" (2:177)

Retaliation is exacted for wounds since Allah says, "*Retaliation for wounds.*" (5:47)]

37.10e. Free and slave

A free man is not killed for a slave, but a slave is killed for a free man.

[A free Muslim is not killed for a slave. A free non-Muslim is killed for a Muslim slave. If a free Muslim kills a slave, he owes his price and the value of any wounds he inflicts. A slave is killed for a free Muslim. Ibn 'Umar says, that that is when the relatives want that because they can choose between killing him or letting him live. If they let him live, the master can choose between handing over the slave or paying the blood money of a victim.]

37.19f. Non-Muslims and Muslims

A Muslim is not killed for an unbeliever but an unbeliever is killed for a Muslim.

[It does not matter whether the Muslim is free or a slave, but an unbeliever is killed for a free or slave Muslim.]

37.10g. No retaliation between unequals

There is no retaliation between a free man and slave in the cause of wounds, nor between a Muslim and an unbeliever.

[That is because equality is obliged for blood. In short, if the victim and perpetrator are equal in freedom and Islam, retaliation can be taken from him for homicide and wounds. If the perpetrator is higher in either category, there is no retaliation in wounds or homicide. If the perpetrator is lower than him, there is retaliation in homicide, but not wounds.

There is no retaliation between Muslim and unbeliever in wounds. If a Muslim injures an unbeliever, he owes the blood money for that limb if it has a specific blood money. If it is not specified, there is judicial discretion (*hukuma*). If an unbeliever injures a Muslim, he pays the blood money in that for which there is a specific blood money, and there is hukuma in what is less than that.]

37.11. Cases Of No Legal Liability (*Hadar*)

37.11a. Damage done by animals

Someone who is driving, leading or riding an animal is liable for anything that the animal tramples on. If the animal tramples on something which was not a result of what the person did, or while it is stopped without anything done to it, there is no legal liability for that.

[The driver drives the animals from behind. They are liable for what the animal destroys with its feet, but not for what it destroys with its tail or mouth, or if it is standing and is not provoked by a blow or goad. There is no penalty for this by the sound transmission that the Prophet, may Allah bless him and grant him peace, said, "There is no blood money for a dumb animal. There is no blood money for a well and there is no blood money for a mine."]

37.11b. Wells and mines

If someone dies in a well or a mine without any one doing something to cause that, there is no liability.

[When someone falls down a well or mine, like someone who works in it and dies. His employer is not charged in it because he has not down anything for which he would be responsible and hence he has no liability.]

37.12 When And By Whom Blood Money Is Paid

The tribe ('aqila) pay the blood money in instalments over three years. If it a third of the blood rate is owed, it is paid in a year. If it is half, it is paid over two years. Blood money is inherited according to the shares of inheritance.

[Full blood money is paid for the accidental killing of a Muslim or someone else. A third of the tariff is due for injuries like that of a *ma'muna* and *ja'ifa*. Half would be due if the victim had lost a hand or foot. Full blood money can also be paid be instalments over four years.

[The instalments are paid in equal amounts. Less than full blood money can be paid in monthly instalments]
Blood money, whether wilful or accidental, is inherited according to the shares of inheritance. Each of the heirs takes the portion allotted him in the Book of Allah.]

37.13. *Ghurra* Penalty For Causing A Miscarriage

There is a *ghurra* owed for causing the loss of the foetus of a free woman. A *ghurra* is a slave or slavegirl worth fifty dinars or 600 dirhams. The *ghurra* is inherited by the heirs according to the Book of Allah.

[That is a twentieth of the blood money of the father or a tenth of that of the mother. The well known position is that only gold rather than camels is paid for the *ghurra*. Al-Aqfahasi said that.]

[*Hashiyya*: This ruling applies to free Muslim or Kitabi woman when the father is a Muslim, even if the pregnancy is the result of illicit sex. It is a pregnancy which would accord umm walad status to a slavegirl and can consist of a lump of flesh, a clot or congealed blood. The miscarriage is the result of a blow. This is when the child is born dead. If it is born alive, but dies because of the injury, full blood money is due.]

37.14. Killing A Relative

Someone who deliberately kills someone does not inherit either his property or his blood money. Someone who kills a relative by accident inherits his property, but not the blood money.

[He does not veil anyone since the one who does not inherit does not veil an heir. In the case of accidental homicide, he inherits and veils. The form of that is that when there are three brothers. One of them kills another and the third inherits a third from the blood money because there is only one brother with the killer because the killer does not inherit from the blood money but does inherit a sixth from the property because the killer inherits from the brother and veils the other brother, reducing his share from a third to a sixth.]

37.15 *Ghurra* In The Case Causing A Slavegirl To Miscarry

There is the same tariff for causing the loss of a foetus of a slave girl pregnant by her master as there is for causing a free woman to miscarry. If she was pregnant by someone else, the fine is a tenth of the value of the mother.

[This is when the master is free and she miscarries. A *ghurra* is due in the form of a slave or slavegirl. The *umm walad* is called a slavegirl (*ama*) here, which is not the technical term. If the parent is not the master, then compensation is a tenth for a foetus whatever the sex of the miscarried foetus.]

37.16. KILLING A SLAVE

If someone kills a slave, he owes his value.

[If a Muslim kills a slave, he owes his price from his own property, whether it is accidental or deliberate unless he kills him for financial gain. Then he is executed for Allah's right.]

37.17. COLLECTIVE MURDER

If a group of people kills someone in aggraved robbery (hiraba) or for financial gain, they are all killed, even if only one of them did the actual killing.

[Whether they kill a free Muslim, slave or *dhimmi*. Killing for money is in order to steal his property and *hiraba*, according to Ibn al-Hajib, consists of every action which is intended to take property when someone cannot normally seek help, whether a man or woman does that.

[Anyone who commit highway robbery or causes alarm on the roads is a *muhârib*. The one who commits this must be adult and sane. It can be in a city or a town.]
They are all executed when all of them undertake the killing, even if only one of them does it. If one of them decides on that without any collusion on their part before, that is different from *hiraba* and gain, and they are not all killed for one unless they conspired to kill him or if they all take part in it.]

37.18. ATONEMENT FOR HOMICIDE

Atonement (*kaffara*) for accidental killing is mandatory. It consists of freeing a Muslim slave, or, if that is not possible, then fasting for two consecutive months. If someone is pardoned for wilful killing, this is best for him.

[At-Tata'i said that it is not a precondition that the killer be legally responsible. That is taken from the property of a child or mad person because that is what is prescribed A slave freed to fulfil the *kaffara* must be Muslim, free of defects and a full slave. In fasting, the *kaffara* is two consecutive months. If he does not fast that consecutively and breaks it deliberately, he must start again. If it is due to forgetfulness or illness, he does not start again. This expiation is also recommended for the one who has been pardoned for wilful killing because of the gravity of what he did.]

III. CRIMES AGAINST ISLAM

37.19 CRIMES AGAINST ISLAM

37.19a. *Zandaqa*

A zindiq is killed and his repentance is not accepted. He is the one who conceals disbelief while making an outward display of Islam.

[This is a *hadd* punishment, not for disbelief, i.e. when he repents after we have exposed him. The legal consequences are that when he is killed for a *hadd*, his property goes to his heirs. An example of his repentance after being exposed is that he denies the *zandaqa* which is proven against him. If he admits it and does not repent, his killing is not a *hadd*. It is disbelief and so his property is that of an apostate and his heirs do not inherit. His property goes to the Muslim treasury. If he repents, it is not accepted. It is accepted if he comes in repentance before he is

exposed. Such a person was considered a hypocrite in the time of the Prophet.]

37.19b. Sorcery

The same is true for a sorcerer. His repentance is not accepted.

[He is killed without being asked to repent once he has been exposed. If he comes in repentance before he is exposed, then his repentance is accepted.]

37.19c. Apostasy

An apostate is killed unless he repents. He is given three days to repent. The same ruling applies to a woman.

[Someone who recants from Islam. Apostasy is disbelief after affirming Islam. If he does not repent, he is killed. One does not execute him immediately but repentance is offered to him. If he refuses then he is killed. It is obligatory to delay execution for three days. If he repents, there is no problem. If not, he is killed after sunset on the third day. This judgement includes men and women. A pregnant woman is deferred until she gives birth.]

[*Hashiyya*: The School is that he is offered Islam every day without being punished by beating or pain or made thirsty and without threats.]

37.19d. Someone who refuses to pray

If someone has not apostasised but affirms the prayer and yet says, "I will not pray," he is given a respite until the time of the next prayer. If he does not pray, he is killed.

["I will not pray now and will pray later" or "I will not pray at all." He is still in the *daruri* time in which he can pray one *rak'at* without considering being at rest or balance or recitation of the *Fatiha*. This is to protect blood as much as possible. If he rises to pray, there is no problem. Otherwise he is killed with the sword immediately.]

37.19e. Refusing to pay zakat

If someone refuses to pay zakat, it is taken from him by force.

[Even if it leads to fighting him, and if he dies in that, his blood is of no consequence.]

37.19f. Refusing to go on hajj

If someone does not go on hajj, he is left to Allah.

[He is not threatened by death or anything else since he may not have all the preconditions for the hajj, even if that seems so outwardly.]

37.19g. Not praying out of denial

Someone who abandons the prayer out of denial of its obligatory is like an apostate. He is asked to repent for three days. If he does not repent, he is killed.

[The obligatory prayer. Denial means to reject its obligatory nature. Such a person is killed for disbelief and not by a hadd. Then the funeral prayer is not said for him and he is not buried in the Muslim cemetery and there is no inheritance between him and his heirs and his property goes to the Muslim treasury.]

[*Hashiyya*: The same applies to the one who denies the obligatory nature of zakat.]

37.19h. Insulting the Messenger of Allah

If someone curses the Messenger of Allah, may Allah bless him and grant him peace, he is killed and his repentance is not accepted. If one of the people of dhimma abuses him outside of that which constitutes his disbelief or curses Allah Almighty other than what constitutes his disbelief, he is killed unless he becomes Muslim.

[When he says something to deprecate him. His execution is a hadd and hence it is of no use if he repents or denies it when there is clear evidence of it. Repentance does not cancel a hadd. This is why he says that his repentance is not accepted.]

[The same principle applies to someone who curses one of the Prophets or one of the angels or denies one of the Books of Allah. If someone abuses someone whose prophethood is a matter of dispute, like al-Khidr, he is strongly punished but not killed.
Statements of dhimmis which constitutes their disbelief would be things like a Jew saying, "He is not a messenger to us, Our Messenger is Musa." Abuse beyond their intrinsic disbelief would be criticising the character of the Prophet, may Allah bless him and grant him peace. An example of that which constitutes his disbelief is saying that God is three or that He has a son.]

37.19i. Estate of an apostate

The estate of the apostate goes to the Muslim community.

[It is placed in the treasury.]

37.20. AGGRAVATED ROBBERY (*HIRÂBA*)

37.20a. No pardon

A bandit may not be pardoned when he is caught.

[This is when he is captured before he repents because that is a *hadd*.]

37.20b. His punishment

If he has killed anyone, he must be killed. If he has not killed anyone, the ruler should exercise his discretion according to the seriousness of his crime and the length of time he has been a robber. He may execute him, or crucify him and then execute him, or cut off his opposite foot and hand, or exile him to another town to be imprisoned there until he repents.

[Whether his victim was a slave or unbeliever, he is still executed, even if the relatives of the victim pardon because it is a right of Allah.]

[This also applies to assisting in the killing by striking or holding the victim. This also applies to adult. A child is not killed, but punished.]
If he has not killed, the ruler takes into consideration that which he think will be an adequate deterrent. If is strong, he receives the strongest of the punishments which is the cutting off the alternate hand and foot. If he is not strong, it is the easier punishment, which is exile. The basis of this is the words of the Almighty, "*The reprisal against those who wage war on Allah and His Messenger and go about the earth corrupting it, is that they should be killed or crucified, or have their alternate hands and feet cut off, or be banished from the land*." (5:35) Execution is in the normal way with the sword or the spear in the throat. Crucifixion is being tied to a post standing, not inverted. Alternate cutting is to cut off the left hand and right foot. If he commits robbery after that, he is killed.

37.20c. When a robber repents before he is captured

If he is not caught until he comes in repentance, none of these rights, which are Allah's rights, are exacted. The rights of people are taken in the form of blood or property.

[None of the penalties for aggravated robbery are applied because Allah says, "*except for those who repent before you gain power over them.*" (5:36)

As for the rights of human beings and other rights of Allah, like those for illicit sex and drinking wine, these are not cancelled at all. So he is liable for the crimes he committed in the course of his bandrity because repentance has no effect on the rights of people. They are is taken from his property and he is indebted for it if he has no property.]

37.20d. Individual responsibility

Each member of a gang of thieves is liable for all the property they take. The entire group is executed for the murder of one person in banditry or for financial gain, even if only one of them did the actual killing.

[Thief here means the robber (*muharib*), not a simple thief.]

[Ibn Rushd says that when a group of thieves help one another, they are guilty of aggravated robbery. This is the predominant view. The same applies to rebels and usurpers when they form a band.

37.20e. Killing a *dhimmi* in a robbery

A Muslim is put to death for killing a dhimmi in aggravated robbery or for financial gain.

[A robber is killed if he kills a slave in this manner before repenting. If he repents after he has killed, then he owes the blood money for a *dhimmi* and the price of the slave and is not killed for them.]

IV. THE HUDUD

37.21. ILLICIT SEX (*ZINA*) BY A SOMEONE WHO IS *MUHSAN*

[Illicit sex (*zina*) is the deliberate intercourse of a Muslim who is legally responsibility with a human being with him he or she has no legal right (by marriage or ownership). It is forbidden as indicated by the Book, the *Sunna* and consensus.

[*Hashiyya*: There must be two, and one of them must be a male. Children and the insane are excluded from responsibility for the action, and that is not legal *zinâ* in respect of them. For legal *zina*, it must be a Muslim. The intercourse of an unbeliever with another unbeliever is not called legal zina and is not subject to the hadd. If an unbeliever has illicit sex with a Muslim woman, he does not receive the *hadd*, but is severely punished, and she is subject to the *hadd*. For it to constitute legal *zina*, it must involve penetration of human private parts by the penis. "Deliberate" intercourse excludes the one who does so in error or in ignorance of the prohibition - as when a new Muslim does that not knowing that it is forbidden.

Proof of its illegality in the Book is, "*And do not go near to fornication. It is an indecent act, an evil way.*" (17:32) In the *Sunna*, we find that the Messenger of Allah, may Allah bless him and grant him peace, said, "One of the greatest wrong actions is that you make something equal with Allah when He created You. Then that you kill your child fearing he will eat with you. Then that you commit adultery with your neighbour's wife." There is no disagreement in the Community that it is forbidden."]
There are three punishments for it: stoning, flogging, and exile after flogging. He starts with the first.]

37.21a. Stoning

If someone commits illicit sex and is a free *muhsan*, he is stoned to death.

[This is a free legally responsible Muslim, male or female. He is stoned with medium sized stones, not large ones to avoid disfigurement or small to avoid torture. People should avoid hitting the face and private parts and throw them at the back or abdomen.]

[*Hashiyya*: According to the School, no pit is dug for this.]

37.21b. Who is considered to be "*muhsan*"

One acquires the status of being *muhsan* by marrying a woman in a valid marriage and having valid intercourse with her.

[*Ihsan* linguistically means chastity. In the Shari'a it is when a sane adult male marries a Muslim or Kitabi woman, free or slave, who is adult or not adult but at an age when sexual intercourse is possible, in a valid marriage – the invalid marriage does not count - and has permitted intercourse with her. If he has intercourse with her while she is having her period, this does not create *ihsan*.]

37.22 THE PUNISHMENT FOR ILLICIT INTERCOURSE BY A NON-*MUHSAN*

37.22a. The punishment

If he is not *muhsan*, he receives a hundred lashes and exiled to another town by the ruler and kept there for a year.

[And he is free Muslim and responsible. Exile is the distance about three days. If he returns before the year, he sent back there or to another place of a similar distance.]

[The prisoner pays for the transport there if he has money. Otherwise the treasury pays.]

37.22b. Slaves and illicit sex

A slave who commits fornication receives fifty lashes, as does a slavegirl, even if they are married. They are not exiled nor is a woman exiled.

[The text comes on the slavegirl. Allah Almighty says, "*If they commit fornication, they should receive half the punishment of free women*." (4:25) Slaves are by analogy with her. It does not matter that they are married, because freedom is one of the preconditions of being ihsan and so there is a difference.

A slave is not exiled because that would cause harm to his master. A woman is not exiled because she needs to be guarded and protected. Exile would expose her to shame and the occurrence of the like of that for which she was exiled.]

37.23. Conviction for Illicit Sex (zina)

37.23a. Establishment of guilt

The *hadd* for illicit sex is only carried out when proven by confession, clear pregnancy, or the testimony of four free men who are adult and of good character who see the actual act, like a kohl stick entering a bottle.

[If someone confesses to zina, even once, that obliges the prescribed *hadd*. Clear pregnancy is proof when the woman has neither husband nor master. The third form of establishing guilt is the testimony of four free men who must see the act of penetration in illicit sex.

[*Hashiyya*: In the case of confession, it must be someone whose confession is valid by his being adult, sane and not compelled.]

37.23b. Testimony to this must be identical

They must testify at the same time, and if one of them does not give the full description, the other three who gave it in full are given the hadd (for slander).

[They all testify at the same time, and must agree on what they saw of the penetration. If they meet and one saw it after another, that is not enough because it can be different acts. If one does not describe it in full, as when he says, "I saw him between her legs but that is all I saw," then the other three receive the *hadd* for slander, but not the fourth. He is punished at the discretion of the ruler, even if it is worse than the *hadd*.]

37.24. MINORS

A hadd is not inflicted on someone who has not reached puberty.

[He or she is not yet legally responsible, whether he or she is the active or passive party. The authorities must, however, discipline him in order to rectify his state.]

37.25. ILLICIT SEX WITH SLAVEGIRL

37.25a. A son having intercourse with his father's slavegirl or vice versa

The *hadd* is carried out on someone who has illicit sex with his father's slavegirl but not for someone who has sex with his son's slavegirl. He must, however, pay him her value, even if she does not become pregnant.

[It is not carried out on the father because of lack of certainty of ownership, which is not the case for the son. The estimation of her price is made on the day of intercourse and the son cannot have intercourse with her after that. After the father pays her price, he must observe *istibra'* (a waiting period to ascertain if she is pregnant) if he wishes to continue having intercourse with her unless the son has had intercourse with her. Then she becomes *haram* for both, but he still must pay the price to his son because he has destroyed her for him.

37.25b. A partner having intercourse with a jointly owned slave

A partner in a jointly owned slavegirl is punished if he has sex with her and is liable for her price if he has money. If she does not conceive, the other partner can choose between keeping her or being reimbursed for her value.

[This is true even if the partner gives him permission to have intercourse with her because that is not permitted by the simple permission of the partner when he is still a partner. He must be disciplined, but less than the hadd since the Prophet, may Allah bless him and grant him peace, said, "Avert the *hudud* on account of doubts." He owes her price if she becomes pregnant and then the partner cannot keep his share in her and continue the partnership because of the establishment of the respect for birth, and she becomes his *umm walad*. He owes no price for her intercourse because he is like someone having intercourse with his property. If she does not become pregnant, the partner can choose to keep his share. He does not pay any fee or brideprice nor her depreciation. If the one who did this is wealthy, his

partner can take his share from him. If he is not, then he is in debt for the price according to what they agree on, immediate or delayed.]

37.26 A Raped Woman's Proof of Innocence

If a pregnant woman says that she was forced, she is not believed and receives the *hadd* unless there is a witness that she was carried off until the abductor disappeared with her or she comes seeking help at the time of the event or comes bleeding.

[A free woman with no husband. The is not believed because the basic principle is that sex is normally voluntary and so that is assumed to be the case unless compulsion is established and because believing her is a means to a lot of illicit sex, given women's inclination to sex, whether she is someone who can be forced or not. She must produce evidence of her truthfulness.

There are three ways of establishing her truthfulness. The first is a reputable witness to her abduction.

[It is said that one witness is adequate because it is a report, and a report is sufficient to bring about a doubt which cancels the hadd.]
The second is when she calls out for help during the event. The third is when comes in a state which indicates her truthfulness, even if she did not cry out in the event. That cancels the *hadd*.]

["Bleeding" refers to a virgin. In the same of a woman who is not a virgin, some physical evidence of violence is required.]

37.27 A Kitabi Rapist

If a Christian rapes a Muslim woman he is killed.

[Or a Jew. When the rape is proven by four witnesses because this action violates their contract. When one of them breaks the contract, he is killed.]

[If he rapes a Kitabi woman married to a Muslim, there are two positions about whether he is executed. If he marries a free Muslim woman and she does not know that he is a *dhimmi*, she receives no *hadd* and there is disagreement about killing him. If she knows that he is a dhimmi but does not know that it is forbidden for her to marry a *dhimmi*, she receives no *hadd*. He is not killed, but is punished severely. Four witnesses to the actual act are required, and the child has the mother's *deen*, not that of the father. He must pay the bride-price to her.]

37.28. Voiding Conviction Based on Confession

If someone retracts a confession to illicit sex, he is released and let go.

[Whether it is based on a doubt or not, during the *hadd* or before it. If he flees during the *hadd*, that it is like retraction. Flight in the *hadd* indicates retraction by tasting the punishment. A doubt would be like when he says, "I had intercourse in an invalid marriage and thought that it was illicit sex." He can also say that he was lying in his confession. When the *hadd* is cancelled, the bride price of the woman is not cancelled when she was forced.]

37.29. THE ONE WHO CARRIES OUT THE *HADD* PUNISHMENT ON SLAVES

A master imposes the *hadd* punishment for illicit sex on his slave or slavegirl is she becomes pregnant or if there is other evidence in the form of four witnesses, or confession. But if the slavegirl has a free husband or her husband is the slave of someone else, the *hadd* punishment is only carried out on her by the ruler.

[He also carries out the hadd punishments for slander and drinking, but not the *hadd* for theft. That has several preconditions. The status of a slavegirl married to other than a slave of the master is different out of the fear that he might misconstrue their being together. Such a case goes to the ruler since the spouse has a right if he is free and his master if he is a slave.]

37.30. HOMOSEXUAL SODOMY

When someone commits the action of the people of Lut with a consenting adult male, they are both stoned, *muhsan* or not.

[The words are general, including free and slave and unbeliever. The action of the people of Lut was anal intercourse between males, whether the male is a slave or not. He excludes the female from this ruling. A person is not stoned for that, but if she is someone with whom intercourse is lawful for him, he is punished severely. If she is not lawful for him, he receives the *hadd* for illicit sex. A precondition for stoning the passive partner is that he is adult. That is also a precondition for the doer. If they are not legally responsible, then there is only discipline.]

37.31. SLANDER (*QADHF*)

[*Qadhf* in technical usage is something which indicates illicit sex or sodomy or denial of paternity. It is forbidden by the Book, Allah

Almighty says, "*Those who accuse women who are chaste*" (24:23) The *sunna* is that the Prophet, may Allah bless him and grant him peace, flogged those who delved into the Lie (about 'A'isha). It has preconditions which concern the slanderer and the slandered. He begins with the penalty.]

[Linguistically, it means "to throw stones at". It is used metaphorically for accusing of disliked things, and it is one of the major wrong actions.]

37.31a. The penalty for slander

A free person who slanders is given 80 lashes, while a slave is given 40 lashes for slander and 50 for fornication. An unbeliever who slanders also receives 80 lashes.

[An adult slanderer, Muslim or unbeliever, even drunk or a father, receives 80 lashes. The slave receives half of that, male or female, Muslim or unbeliever. What is required is discrimination. A free unbeliever also receives 80 lashes because the ayat is general.]

[Ibn 'Arafa mentioned from the *Mudawwana* that there is no *hadd* applied on the harbi, and Ibn Marzuq said that as well.]

37.31b. Slander which is not punished

There is no *hadd* for someone who slanders a slave or unbeliever. There is a *hadd* on account of accusing a girl of fornication if she is of an age in which she can have intercourse, but there is no *hadd* on account of slandering a boy, nor is the punishment carried out on a minor for slander or intercourse.

[Slander means to accuse someone of illicit sex. A person is not flogged for slandering a boy because there is no shame connected to him

whereas there is for the girl. A child is not punished because his deeds are not recorded.]

[If he slanders a slave or unbeliever, he is punished, but not with the *hadd*, according to *at-Tahqiq*.]

37.31c. Impugning someone's paternity or accusing someone of sodomy

A *hadd* for slander is imposed on someone who denies a man's parentage or implies that. If someone calls a man a sodomite, he also receives the *hadd*.

[This is about a free Muslim man or woman. It is the same if those slandered are children or mad. It applies if someone attacks a person's lineage, however high. An example of that is saying, "You are not the child of so-and-so." He receives the *hadd* because the suggestion that a man is a bastard is worse than accusing him of illicit sex because the shame of illicit sex is removed by repentance while the shame of being a bastard is never removed. This also applies to implication as when he says to a person, "I am not a fornicator," meaning that the one he is speaking to is. Expressions can imply their opposite.

Accusing someone of sodomy also carries the *hadd* because he ascribes to him to a foul action whose doer is subject to the *hadd*.]

37.32 MULTIPLE INFRACTIONS

37.32a. The penalty for slandering a group

If someone slanders a group, then one of the group may oblige the *hadd* once, and then the rest have nothing from him.

[This when it is done in one statement. The *hadd* in slander is for the sake of removing shame from the slanderer and denying the slander. When the slanderer receives the *hadd*, then the shame is removed and

the desired goal of the Shari'a achieved and there is no need to repeat the hadd.]

37.32b. The death penalty takes precedence

If someone drinks wine or fornicates more than once, there is one *hadd* for all of that. It is the same with slandering a group of people. As for someone who has both hudud punishments and killing obliged on him, killing him is sufficient in that – except in the case of slander. He receives the *hadd* for that before he is killed.

[There is one *hadd* for multiple infractions because the genus is one, and one *hadd* satisfies several of the same infraction. The same principle applies to slandering a group of people.

If someone is obliged to receive *hudud* punishment and execution, like someone who fornicates, drinks wine, steals and kills a Muslim, the execution satisfies all of that and no *hadd* is carried out on him except for slander. The *hadd* must be imposed to remove the shame from the slandered.]

37.33. DRINKING WINE

If someone drinks wine or intoxicating nabidh, he receives a *hadd* of 80 lashes, whether he is intoxicated or not, but he is not imprisoned for that.

[Wine includes all that has been fermented from grapes so that it causes intoxication. *Nabidh* results from soaking dates or raisins in water.

[The punishment is administered to free responsible Muslims out of free choice without being compelled, even if the person is ignorant of the *hadd* or the prohibition. *Khamr* is made from pressed grape juice. It must be swallowed. The *hadd* is not administered to *dhimmis* or *harbis*.

The evils resulting from drinking are worse since that can lead to committing other crimes.]
The punishment is 80 lashes once he is sober again if that is established by confession of the testimony of two witnesses who saw him use it or smelled it. There is a disagreement about whether there is a *hadd* for *nabidh* which does not intoxicate. He is not imprisoned even if he does it a lot because it is not reported from the Prophet nor from any of the Companions that they imprisoned for that.]

37.34 ADMINISTRATION OF THE *HADD*

The one who receives a *hadd* is stripped, but a woman is only divested of what would protect her from the blows. They receive the flogging sitting down. A pregnant woman is not flogged until she gives birth, nor is a very sick person until he recovers.

[A male is stripped of everything except what covers the private parts. A woman is stripped of things like a fur because the goal is restraint from the like of what was committed, and it is supposed that the pain of the beating will be a deterrent to the wrongdoer. It is recommended that she be put in a basket and some earth under her and moistened with water for the sake of covering.

[In flogging, it is the back and shoulders which are hit.]
A pregnant woman is not beaten until she gives birth and finds someone to care for the child, based on the hadith of Ghamidiyya woman who came to the Messenger of Allah, may Allah bless him and grant him peace, while pregnant and said, "Purify me." He told her, "Go away until you give birth." A very sick person is not flogged until he recovers out of fear of causing death."]

37.35 BESTIALITY

Someone guilty of bestiality is not killed, but is punished.

[Ibn Najis said that he is punished since it is possible that one might understand that he has the *hadd* of a virgin. but that is not the case. "He is punished" indicates that what is meant is that he does not receive any hadd. He is punished as the ruler sees fit since he has done something forbidden.]

[*Hashiyya*: This is based on the hadith of the Prophet, may Allah bless him and grant him peace , "Whoever comes to an animal, receives no *hadd*." At-Tirmidhi related it. That is the action of the people of knowledge and the transmission that he and the animal are killed is not established.]

37.36. THE *HADD* FOR STEALING

37.36a. The penalty for theft

If someone steals a fourth of a dinar of gold or the equivalent of goods worth three dirhams or the weight of three dirhams in silver on the day of the theft, his hand is cut off if he stole that from a protected place. His hand is not cut off if he snatches them.

[This penalty is for men and women, free and slave, Muslim or others. The position of the school is that the value of the object is calculated on the day of the theft, not the day of the judgement. The dirhams are pure silver and one does not any attention to whether they are equivalent to a fourth of a dinar.

[This is when there are dirhams in circulation in the land where the theft occurred.]

The basis for this is what is in the *Sahih* collection where the Prophet, may Allah bless him and grant him peace,said, "The hand of a theft is only cut off for a quarter of a dinar or more." In the *Muwatta'* it is reported that the Prophet, may Allah bless him and grant him peace, said, "The hand of a thief is cut off for a shield worth 3 dirhams."

[The thief must also be adult and sane and not own the stolen object. Also excluded is a mother or father stealing the child's property. If someone is forced to take part in a theft, his hand is not cut off. This would be like the case of someone who is starving.]
It must be stolen from a protected place, which is in a place in which is normally put for safety. That varies according to individuals and property. Some places are secure for one person but not for another, or are secure for some goods rather than others.

The hand is not cut off for snatching, which is when he takes something openly in when someone is inattentive.]

37.36b. Multiple cases of the same crime

In such a case of theft, the hand applies of a man, woman or slave is cut off. If the person steals a second time, his left foot is cut off. If he steals a third time, his left hand is cut off. If he steals a fourth time, his right foot is cut off. If he then steals again, he is flogged and imprisoned.

[The amputation takes place at the wrist and at the ankle. If he is imprisoned, it is until he repents or dies.]

[The expense of his imprisonment comes from his own property. If he has no property, then from the Muslim treasury.]

37.37 VOIDING A CONVICTION BASED ON ADMISSION

If someone confesses to theft, his hand is cut off. If he retracts, he is let go.

[One confession is enough for this. If he retracts his confession by a doubt or something as when he says, "I took my deposited property," and he thought that that was theft. A case of no doubt is when he says, "I lied in my confession."]

37.38. RETURN OF STOLEN GOODS

A thief must return what he stole if he has it. Otherwise, he is indebted for that amount.

[He pays the value. Otherwise he remains liable for it.]

37.39 MITIGATING FACTORS

37.39a. The item stolen must be removed from its place of keeping

If someone takes something from the place where it is in safe keeping, his hand is not cut off until he actually removes the stolen object from its place of keeping. The same applies to stealing a shroud from a grave.

[This is whether he removed it himself or threw it outside or removed it on the back of his animal or a group lift it on the head or back of one of them and he takes it out while they remain in the secure place or they go out with him. For all of that there is amputation. When it has not been taken out of the secure place or it is destroyed in it and then removed, there is no amputation. There is no amputation for someone who steals a shroud until he takes it from the grave if it is worth a fourth of a dinar or more.]

37.39b. Stealing from a house one is permitted to enter

If someone steals from a house he has permission to enter, his hand is not cut off. The hand of someone who snatches is not cut off.

[That is because he is not a thief. He is treacherous. The treacherous one does not have his hand cut off. The basis is what at-Tirmidhi related: the Prophet, may Allah bless him and grant him peace, said, "Neither a looter, treacherous person or snatcher has their hand cut off." A looter is the one who takes property openly with strength and force. The treacherous person and snatcher do not have their hands cut off. This point is repeated.]

[*Hashiyya*: If a spouse steals from the other spouse from a place he or she is forbidden to enter, their hand is cut off. If it is from a place he or she is not forbidden to enter, it is not cut off. This is not just a verbal prohibition, but the place has to be locked.]

37.39c. A slave's confession

If a slave confesses to something which obliges a *hadd* or amputation on his body, his confession is binding. In that which concerns his person, he cannot confess.

[This is when admits to a crime for which the *hadd* is amputation, like drinking, slander or illicit sex, i.e. for any matter which obliges punishment on his body, that is obliged by his confession, even if his master denies it, as is in at-Tata'i because he is not suspected of wanting to cause this to himself.

If he admits to what would oblige to his being taken possession of, as when he admits to cutting off the hand of a free person, that is not accepted from him because he is suspected of wanting to be transferred.]

37.39d. That for which there is no amputation

There is no amputation for taking fruit hanging on a tree, a palm pith, or for taking grazing sheep or goats unless he stole them from their pens, nor for taking fruit unless it is from a barn.

[The same applies to fruit hanging in gardens. As for fruit hanging in houses or rooms, there is amputation for that. When palm piths are is on the tree, there is no amputation for them. There is no hadd for sheep or goats which are grazing, whether or not there is a shepherd with them unless they are taken from the pens where they go after grazing. The same principle applies to fruits in the barn wherever it is located.]

37.40 INTERCESSION

37.40a. Once the crime is reported to the ruler, there is no intercession

There is no intercession once a case of theft or illicit sex has reached the ruler.

[The same applies to drinking wine. Once the case reaches the ruler, then it is the right of Allah and the ruler cannot pardon nor can he be asked to pardon, even if the fornicator or thief repents. The lack of permission to pardon is derived from the hadiths about Ma'iz and the Ghamidiyya woman.]

[Ma'iz ibn Malik confessed four times to illicit sex. The Ghamidiyya woman came to the Prophet and asked to be purified of the sin of illicit sex. They were both stoned.]

37.40b. Slander is an exception to this

There is disagreement about that in case of slander.

[Malik said that it is permitted based on the fact that the *hadd* for slander is a right for the slandered. Another time he said that it is not permitted based on its being a right of Allah. It is permitted to intercede before it reaches the ruler.]

37.41. Pickpocketing And Stealing Public Property

37.41a There is amputation for pickpocketing

If someone steals from someone's sleeve, his hand is cut off. If someone steals from the granary or treasury or booty, his hand is cut off.

[Pickpocketing applies to stealing from a sleeve, pocket, turban or belt. The thief's hand is cut off because that is protected place. The granary is the place where the ruler puts the food and goods and the treasury is repository for money. Stealing from the booty is after it has been set aside. The hand is cut off for any such theft.]

37.41b. A possible exception

It is said that that if what he took is three dirhams more than his share of the booty then his hand is cut off.

[That is when he exceeds his right by that amount.]

[That is the possible of 'Abdu'l-Malik, while the first position is that of Ibn al-Qasim.]

37.42. Prosecution for stolen goods

When a thief has his hand cut off, he is prosecuted for the value of missing stolen goods if he is solvent. If he has no property, he is not

prosecuted. He is, however, prosecuted for an amount which does not reach the level at which the hand is cut off.

[Its value is taken from him. If he still has the stolen property, it is taken from him after his hand is cut off because amputation is not compensation for it. If the thief is insolvent, it satisfies the time between his theft and amputation and it is cancelled for him so that he does receive two punishments. He is prosecuted for petty theft which is below the *nisab* for amputation.]

CHAPTER 38. JUDGEMENTS AND TESTIMONY

Qada' (plural *aqdiya*) is used for judgements, finishing, destruction performance, sending, carrying out, going, and determination, Technically, as Ibn Rushd says, it is reporting about a legal ruling in a binding way. It is one of the *fard kifayas*, i.e, there must be a number who undertake it since it contains necessary public welfare. It can become an individual obligation, as when there is one man who fulfils its preconditions and it is feared that rights will be lost for their people if he does not undertake judgement. It can be forbidden, when someone is ignorant and aiming for this world by it or tyrannical. Judgement with justice is one of the best pious actions and injustice in judgements is one of the greatest wrong actions and greatest sins. The Almighty says, "*The degenerates will be firewood for Hellfire*." (72:15) The Prophet, may Allah bless him and grant him peace, said, "The most arrogant of people to Allah and the most hated of people by Allah and the furthest of people from Allah is a man whom Allah appoints over anything in the Community of Muhammad in anything and is not just to them."

[Being is a qadi is a test for the one who undertakes it. The Prophet, may Allah bless him and grant him peace, said, "Whoever is made a qadi has been slaughtered without a knife." It has certain preconditions: being Muslim, sane, free, male, adult, equitable, intelligent and capable of *ijtihad*.]
One of its preconditions is ijtihad. It is not sound to appoint an imitator when there is a *mujtahid* available.

[It is permitted when there is no *mujtahid*. He must act according to the well-known position in the school of his Imam. Know that he means an absolute *mujtahid*. A lesser *mujtahid* is in the position of an imitator. There are two categories: a *mujtahid* of the school, who can establish the proofs, and a *mujtahid* in *fatwa*, who can exercise preference.
He begins the topic with the sound hadith.

38.1. COURT PROCEDURE

38.1a. The onus is on the claimant

The plaintiff must produce testimony and the one who denies it takes an oath.

[One of the shaykhs said that the claimant is the one who says that something is true and the defendant is the one who says it is not. The claimant must produce evidence because he is someone who seeks to establish something. The oath is taken by the one who denies it because he has the stronger side since he claims the basis and the basis is lack of liability.]

38.1b. No oaths unless the case is plausible

There is no oath taken unless it is established that they have had dealings or that is suspected. That was the practice of the judges of the people of Madina. 'Umar ibn 'Abdu'l-'Aziz said, "People have new cases acccording to the extent that they have new iniquity."

[Dealings are established by the admission of the claimant or by the testimony of two just witnesses or one witness and the oath of the claimant. "Suspicion" is in respect of the theft and usurper. "Dealings" is in business and probability of suspicion is in unlawful appropriation or use of property.

[Hash.: The *Mukhtasar* says that "dealings" are established by a woman's evidence.]
The people of Madina agreed on the evidence, and it is singled out by the hadith where the Prophet, may Allah bless him and grant him peace, said, "The claimant produces evidence and the oath is for the one who denies it." The literal meaning of the hadith is that the oath is generally directed, but it is specific requirement that there were dealings between

them. That is because there are modern cases according to what people devise of new forms of iniquity which is stressed by what 'Umar ibn 'Abdu'l-'Aziz said. Cases are decided according to ijtihad in that in which there is no text. There is no doubt that 'Umar ibn 'Abdu'l-'Aziz was one of the imams who are imitated in word and deed. This is not contradicted by his words, "Leave what the moderns innovate" because that is not based on the Book, Sunna or consensus.

38.1c. When the defendant refuses to swear

If the defendant refuses to take the oath, judgement is not given to the claimant until he swears an oath to what he claims to the best of his knowledge.

[When he says "I will not swear", for instance. The claimant does not receive his claim simply by the refusal of the defendant to swear. The claimant must swear to what he knows of the description of what he claims and its amount. This is for a claim of identification. As for an accusation, as when he suspects a person of stealing property, the claimant does not swear, but the defendant must pay when he refuses to swear. The oath is only taken by the claimant in a claim of identification.]

38.1d. The form of the oath

The oath is "By Allah, there is no god but Him." [Bi'llâhi'lladhî lâ ilaha illâ huwa]

[This is the oath for all rights. Nothing is added or taken form this form. This is general to all people, Muslims and Kitabis. It is said that the Kitabi only says, "By Allah."]

[The later is the apparent position of the *Mudawwana*.]

38.1e. Where the oath is taken

He takes the oath standing by the minbar of the Messenger of Allah, may Allah bless him and grant him peace, if it concerns something worth a quarter of a dinar or more. Outside of Madina, he takes the oath in the central mosque at the most esteemed place in it. The unbeliever swears "By Allah" in a place he respects.

[He takes the oath standing to make it harsh. If he swears seated, that is not adequate. This is what is relied on it. The oath in Madina is taken at the minbar to deter the one who takes the oath. Other places, it is the Jumu'a mosque, and at the mihrab. If he refuses to swear there, he is considered as refusing to swear.

The Kitabi swears in a place he respects. For a Jew, he would swear in the synagogue and a Christian in the Church and a Magian in his temple.]

38.1f. Later evidence

When the claimant finds evidence which he did not know before after the defendant has taken an oath, judgement can be given in his favour by it. If he knew of it before, it is not accepted. There is also a view that it is accepted.

[Whether the evidence was absent or present, if it is close to the time, like about the length of a week. Ibn al-Majishun said that judgement is given in his favour after he swears an oath that he did not know. If he knew about it and it was present, then the evidence is not accepted in the well-known position. Ibn al-Qassar says that it is accepted.]

[Hash: He moves on to discuss testimony which is a *fard kifaya*. If there is only one person capable to giving testimony, then it is an individual obligation. If he then refuses to testify in such a case, he is disobedient and can be dealt with by beating and imprisonment. Testimony has

different ranks. The first is testimony in the case of illicit sex and sodomy. The second rank is dealt with here.]

38.1g. One witness and an oath in property cases

Judgement can be given on the basis of a single witness and oath in the case of property,

[And that which leads to property, as when one of them claims that he has an option to withdraw in a sale and the other that the sale was final. The statement accepted is that of the one who says it was final and the one who claims there is an option must bring a witness and take an oath. It similar to hire, accidental wounds and recording.]

38.1h. Not for other cases

but one witness and an oath is not accepted in the case of marriage, divorce, and *hudud* punishments,

[This is the third rank.]
[Two witnesses are required in marriage, divorce and the *hudud*. It states in *al-Mudawwana* that if someone claims he has married a woman and she denies it, he cannot take an oath to it, even if he produces a witness. Marriage is only established by two witnesses. An example of that in divorce is when the woman claims that her husband divorced her and she has one witness. She does not swear an oath with him and the divorce is not obliged. An example of that in the *hudud* is that one man states that another man has slandered him and produces one witness. He does not swear with him and there is no *hadd*.]

38.1i. Not in homicide or deliberate wounding

nor is one witness and an oath accepted in deliberate wounding or homicide. Homicide is only decided by the *qasama* process. There is another view that wounds can be decided on that basis.

[As when he claims that someone else has deliberately injured him and has only one witness. He does not swear with him. The oath is offered to the accused. If he swears, he is free. If he refuses, he is imprisoned. If he remains for a long time, he is indebted and removed. This does not mean that one judges in homicide by a witness and an oath along is with the qasama about the life.

It is also said that judgement can be made about injuries by one witness and an oath in general, whether deliberate or accidental. He presents this and it is well-known while putting the other first which is not well-known.]

[The view about accidental wounding being decided by one witness and an oath is because it leads to property in the form of the blood money.]

38.2. WOMEN'S TESTIMONY

38.2a. Their testimony regarding property

The testimony of women is only permitted in respect of property.

[And what is connected to property, like hire.]

38.2b. The weight of a woman's testimony

A hundred women count as two women. Two women count as one man. Judgement is given on the basis of that with one man or an oath in cases where one witness and an oath are permitted.

[That is like one man, since the rule that it is possible with an oath when in such cases.]

38.2c. Cases where women's testimony is accepted

The testimony of two women alone is accepted in matters which men do not observe, such as childbirth, the crying of a new-born child and the like.

[This is the fourth rank of testimony.

Their testimony is accepted in what men do not witness, like birth and the cry of a new-born. The fact that he cries means that he was born alive and then he inherits and is inherited from. The like of that are things like defects of the vagina and body. This does not contradict what he said about the testimony of women only being accepted in property because that is particular to what we defined of his words.]

38.3. Rejecting a Witness Because of Character or Relationship

38.3a. Rejection of testimony

Neither the testimony of an adversary nor someone who is suspect is not allowed.

[This is the testimony of an opponent against his opponent. Someone suspect is suspect in his deen because of committing something not permitted in the ShariÔa. It is also said that his testimony is suspect.

[*Hashiyya*: This is an opponent for material gain which is not insignificant. It is permitted if it is about something insignificant or it is a difference in the deen, as a Muslim testifying against an unbeliever. It, however, there is a long-standing feud, it is not accepted.

As the evidence of an adversary is not accepted, it is not accepted against the mother, father or son of his adversary, nor is his son's testimony accepted. Someone's testimony itself being suspect is when he is suspected of bias in his testimony.]

38.3b. Acceptable witnesses

One only accepts the testimony of reputable witnesses.

[Being reputable *('adala*) is not that a man is investigated for obedience so that no act of disobedience sullies it because that is impossible and only the true are capable of it. What is meant is he usually is obedient to Allah and avoids wrong actions.]

[Someone who is *'adl* is free, Muslim, sane, adult, free of iniquity, debarment due to foolishness, and free of innovation. Innovation includes Mu'tazilites and Kharijites. Al-Qarafi said, "In our view*, 'adala* is Allah's right from the judge. He is only permitted to give judgement with reputable witnesses. Ash-Shafi'i said, "Since it is Allah's right, even if the litigants agree to accept the testimony of an unbeliever or one with whom Allah is angry, the judge is not permitted to give judgement on that basis." Ibn al-Qasim said that.]

38.3c. Those who have been punished for a hadd are not acceptable as witnesses

One does not accept the testimony of someone who has been given a *hadd* punishment nor the testimony of a slave, child, or unbeliever. If someone who has received the hadd for illicit sex repents, then his testimony may be accepted except in cases involving illicit sex.

[This is when someone has not repented. If he repents, there is a text on that.

A slave's testimony while still a slave is not permitted because testimony is one of the ranks of the Shari'a which obliges rights against another and a slave is not worthy of it. The limitation is only while he is a slave. He can testify once he is free. The testimony of a child is not accepted although it can be accepted against another child.

The testimony of an unbeliever is not acceptable either against a Muslim or an unbeliever. If he was an unbeliever and becomes Muslim, his testimony is accepted in what does not refer to the time he was an unbeliever. It is not accepted after his Islam because he is suspected of removing the imperfection which his testimony rejects because of it is natural human natural to seek to remove shame.

If someone repents of illicit sex, his testimony is not accepted in illicit sex. It is only accepted in other cases than for which he received a hadd. This is general, even if he became the best person after his repentance.]

38.3d. Kinship bars testimony

It is not permitted for a son to testify in favour of his parents or vice versa, nor a husband to testify in favour of his wife or vice versa. It is permitted for a man of good character to testify in favour of his brother.

[The point is that the branch does not testify to its root nor the root to its branch. As for the testimony of the branch for the branch of the root or the reverse, that is permitted as is the testimony of one of the parents for one of the sons against another son if there is no bias for the one in whose favour the testimony is given. Otherwise it is forbidden, as when a parent testifies for his pious son against the impious. A spouse cannot testify for the other spouse while they are married or in a revocable divorce. The same does not apply once they are divorced.

[The point about root and branches is that the principle extends upwards to grandparents and downwards to grandchildren.]

It is permitted for a brother in favour of his brother, but only in cases of property and injuries which entail property, not that which would bring his brother honour or rank, like testifying that he married in such a way that would bring him honour or rank.]

38.3e. Others whose testimony is inadmissible

One does not allow the testimony of a habitual liar, someone who openly commits a major wrong action, someone seeking his own self-interest or seeking to avert harm from himself, or a guardian in favour of his orphan. A guardian may, however testify against his ward.

[*Hash*: A habitual liar lies time and time again. A single lie has no effect. This is also unlawful lying. As for permitted lying, as when it is done in an effort to make peace between two people with a feud, that does not detract from his character.
[Someone who openly commits a major wrong action or commits a small of minor action which involves baseness like stealing a morsel or stinginess about a grain in the measure. As for the minor wrong actions which do not indicate baseness, like looking at a woman, that does not detract unless that is habitual.

It is not permitted for someone to testify for his own benefit, as when someone testifies for his partner about something regarding shared property, as when one of the partners claims money from a man and that money which he claims is part of the property of the partnership. His partner cannot testify for him because it would bring him benefit. Averting harm is like when a man owes a debt to another and another man claims a debt and this one testifies that he paid his debt. He is suspected of defending himself in the quarrel between him and the other claimant, so he will say, "I will divide the property of the debtor with you," or "I will have it alone and you have no debt."

The same applies to a guardian because this is part of bringing about self-interest by his testimony. The point is repeated because he can testify against him. The expression in the *Mudawwana* is that if someone cannot testify in favour someone, is permitted to testify against him.]

38.4. TESTIFYING TO THE CHARACTER OF A WITNESS

38.4a. Such testimonial is not permitted from women

It is not permitted for women to testify to the good or bad character of a witness.

[Neither about men or women. Their testimonial is not accepted in either case.]

38.4b. Form of testimonial about character

Declaring someone to have good character (*tazkiya*) is only accepted when someone says, "He is reputable and pleasing *('adlun ridâ*)." A single witness to the character or bad character of a witness is not accepted.

[Justice is a firm form in the self which is compelled to have constant taqwa. One witness is not accepted outwardly.]

[*Hash*: Reputability is in action and pleasing means for testifying. It is said that reputability it between a person and people, and being pleasing is between him and Allah.]

38.5. TESTIMONY OF MINORS

The testimony of minors may be accepted on wounds before they have dispersed and no adult has been with them.

[This is about what happens among them. Their testimony is also accepted in killing in the famous position as well as in wounds, but only before they separate, out of the fear that they might be coached by an adult.]

[*Hashiyya*: There are further preconditions. They must be male, free and Muslim. Two or more of them must testify and they must have the same testimony. The one who gives evidence must not be a relative of the one in whose favour he testifies nor an enemy of the one he testifies against. They must have discrimination about the action. They must have been in the same group. It is also said that the child must be at least around the age of ten.]

38.6. SALE DISPUTES

When two parties to a contract disagree, the seller is asked to swear an oath and then the buyer either accepts that or swears an oath and is free of the contract.

[They may disagree about the price as when the seller says that it is a dinar and the buyer half a dinar. First the seller swears. The School obliges that the seller begins with the oath and takes an oath denying the claim of the buyer and confirming his claim in the same oath. He says, "By Allah, I did not sell it for half a dinar, I sold it for a dinar." Then the buyer can take the goods for what the seller says, or swear to deny the claim of the seller and affirm his claim. He would say in this example, "By Allah, I did not buy it for a dinar, I bought it for half a dinar." Then he is freed of the binding nature of the sale, and he can choose between taking the goods for what the seller swore or swear and be quit of the transaction.]

38.7. OWNERSHIP DISPUTES

38.7a. Contention over ownership

When two claimants disagree about something in their possession, they swear oath and then the disputed property is divided between them.

[This is when each of them claims ownership and neither has any evidence nor proof of his truthfulness and no one else contends with them in it, and it is part of which either of them can acquire. It is shared between them because their claims are equal and one cannot be preferred over the other. If one of them refuses to take an oath, then his right is cancelled in favour of the other.]

[If there are three, it is divided between the three.]

38.7b. When there are character witnesses

If the two produce witnesses, judgement is given in favour of the one with better character. If the two witnesses are equal, then the two parties swear an oath and the property is divided between them.

[If each of them has a witness who testifies for him and one of the dominates the other in justice, then judgement is given in favour of the more just after he swears that he did not sell that thing nor give it him nor did it remove from his property by any aspect at all. If neither witness is preferred, then the two witnesses must be the same in justice and one does not prefer by number unless it reaches the level of *mutawatir*. They swear and the disputed thing is divided between them because it is not more fitting to give judgement for one of them than the other.]

38.8. RETRACTED TESTIMONY

When a witness retracts after judgement, he is liable for any losses in which his testimony resulted if he admits to perjury. The people of Malik said that.

[Ibn Naji says that the apparent meaning of the words demands that all the people of Malik differentiated between him admitting that he gave false testimony or not admitting it. In the first, he is liable but not in the second. That is not the case, Mutarrif, Ibn al-Qasim and Asbagh said in the *Wadiha* that he is liable absolutely because the error and deliberate regarding people's property is the same.]

38.9 THE STATEMENT OF AN AGENT

38.9a. His statement is accepted

When someone says, "I have returned to you what you entrusted to me to pay" or "to sell" or "I paid you its price" or "I have returned your deposit or your loan," then his statement is accepted.

[As when he entrusts him with an amount to repay a debt he owes to someone and the agent does not find him and returns it. If the one who entrusted him contends with him, then one takes the word of the agent since he is a trustee. The same applies in cases of a deposit.

In all these cases the statement accepted is that of the one entrusted. It maybe that the author follows what the shaykhs of the *Mudawwana* said when he makes a statement on it, his word must be accompanied by an oath and so the statement accepted is when he swears an oath to it.]

38.9b. Proof of delivery

If someone says, "I gave it to so-and-so as you commanded," and that person denies it, then the one who delivered it must produce proof. Otherwise he is liable.

[He must have evidence that he gave it to him, otherwise he is liable for it.

[Hashiyya: This is when the custom is to produce witnesses or he was commanded to have witnesses. Then not having witnesses is negligence on his part. If the custom is not to have witnesses, then he is not liable, as this is a case of acting according to custom ('*urf*).]

38.10. The Statement of a Guardian (*Wali*)

The same is true in the case of an orphan's guardian. He needs proof about what he spent on them or gave to them. If, however, they are in his direct custody, then he is believed about their maintenance when it seems probable.

[This is when the orphans dispute with him about spending and claim that he has not spent on them or they contest the amount he has spent when they were not in his custody as when he spent on them is feasible or well-known, if they are in his care. That is because of the difficulty of having witnesses in the later case and so the onus is lightened.]

38.11. Amicable Settlements (*Sulh*)

An amicable settlement is permitted unless it leads to the unlawful. It is permitted in both affirmation or denial.

[Unless it involves something forbidden in the Shari'a, like paying gold for silver on a delay. It is permitted in affirming a sale, as when it is goods or animals and is settled for dirhams, or denial when he claims a house and the defendant denies it, but satisfies him with something. It is permitted in contracts.]

[*Hashiyya*: Abu Dawud and at-Tirmidhi report that the Prophet, may Allah bless him and grant him peace, said, "Reconciliation between the Muslims is permitted except for a reconciliation which makes the lawful unlawful or the unlawful lawful." An example of the first is when about a house which is claimed for wine or pigs, and the second is exchanging goods for a garment provided that one who takes it does not wear it or sell it."]

38.12. A Slavegirl Who Marries Claiming She Is Free

If a deceitful slavegirl marries a man on the basis that she is free, her master can reclaim her and claim the value of any child on the day of the judgement.

[She deceives him by her actual words or by giving the appearance that she is free to the one who wants to marry her. The husband owes the minimum of what is named and the brideprice of a woman like her. The price of the child is paid by the father since the child is not one whom the master has to free. If the master has to free him, there is no liability for the deluded husband to pay the price of his child, as when she deludes the son of his grandparent and he marries her thinking she is free and then he learns that she is a slave. The child is freed by his grandfather or grandmother.]

38.13. ESTABLISHING A CLAIM TO A SLAVEGIRL

38.13a. The right of the legal owner

When someone establishes his claim to a slavegirl who has borne (her new master) a child, he is entitled to her value and the value of her child on the day of judgement.

[The case is when she has borne a child to a free person who did not acquire her illegally, whether by ownership, gift, inheritance, purchase or whatever manner of ownership. The real owner is entitled to the price of the slavegirl and the price of the child on the day of judgement and the child is free and his lineage established.]

38.13b. Other views

It is also said that he takes her and the price of the child, and it is also said that he only takes her price, unless he chooses to take the price. If he choose to take her price, he takes from the abductor who sold her.

[He takes her value on the day he had intercourse with her. All three statements are made by Malik. He takes the price from the abductor when he chooses the price as is confirmed by the sale of the usurper.]

38.13c. If the usurper still has her

If she is still in the possession of the abductor, then he receives the hadd and the child and its mother are slaves of her true owner.

[If, after birth, the slavegirl to whom someone is legally entitled is still in the unlawful possession of the one who abducted and he knows she is not lawfully his, then he receives the *hadd* because he had illicit sex.

The child is a slave since it is without father. It would have been better to say that the child is ascribed to the lineage of the mother because it is connected to her and not him.

The ruling regarding someone who purchased her from the abductor, knowing about his abduction, is the same as that of abductor: his lineage is severed when there is evidence that he knew before intercourse that she was unlawfully abducted.]

38.14. ESTABLISHING A CLAIM TO LAND

38.14a. If land has been build on

If someone establishes his claim to land after it is has been built on, he should pay the price of the buildings which are standing. If he refuses to do that, the buyer should pay him the price of the undeveloped land.

[In the case of someone entitled to take land from someone who has bought it or someone else who has not unlawfully acquired it after there are buildings, planting and the like on it, he can pay for the improvements and take the land with its structures or the buyer can pay him the value of the empty land.]

38.14b. When the owner refuses either course

If the buyer refuses, then they become partners in the property according to the value of which of them owns.

[Hash: One version has, "either of them refuses."]
[Or when either of them refuses to pay the other. They become partners according to the value of each of them. If the land is worth 10 dinars and the buildings worth 20, then one owns two-thirds and the other one-third. One assesses the value on the day of the judgement, according to the famous position, not the day of construction of the buildings.]

38.14c. The case of the usurper

A usurper, however, is ordered to remove his buildings, crops and trees. If he wishes, their owner can be paid the price of the debris and trees, after deducting the cost of hiring someone to remove that. He owes nothing for what has no value after it is uprooted or demolished.

[It is not permitted for the two of them to agree to have that remain in the land in exchange for rent because that would lead to selling crops before they are ripe in exchange for letting them remain because the owner would be able to take it free of charge in the first division or by the value uprooted in this second division after it is sold to him.

[*Hash*:. If the time for planting that land has passed, the owner does not command him to remove the crop, but he is paid rental for that year.] Then the trees can be taken as firewood. He is allowed to gives the owner the price of its debris and crops. The like of that is that its price uprooted is 10 dirhams and the wage for removing it is four dirhams. He can pay him six dirhams. He is not liable for things like engravings, or plants or trees before they are of any use.]

38.15. Increment in Usurped Goods

38.15a. Any increment must be returned

Someone who unlawfully acquired it must return any revenue, but no one except someone who has acquired it unlawfully is obliged to return it.

[This includes the thief, treacherous person, pickpockets and the like and all of those about whose unlawful possession is clear without any uncertainty. That is also based on the words of the Prophet, may Allah bless him and grant him peace , "The property of a Muslim person is

only lawful when he is happy about it." The non-usurper is one with a doubt, even if he bought it from an usurper when he did not know.

Since the child is not part of the revenue and he fears that it might be included, he continues:]

38.15b. Offspring

In the case of the offspring of animals and slavegirls, if they have children by other than the (new) master, they are taken by the one entitled to the mothers from the person who purchased them or has gained possession of them for some other reason. If someone unlawfully abducts a slavegirl and has intercourse with her, the child is a slave and he receives the *hadd* punishment.

[Other means would be like someone who was given her as a gift or sadaqa because the ruling of the child is that of the mother since she is property of the one to whom she belongs and so the owner takes him. The usurper does not owe the bride-price, but a fine for the lowering of her value due to intercourse.]

38.16 Building Regulations

38.16a. Responsibility of the owner of the ground floor

The owner of the ground floor is responsible for maintenance of ground floor as well as for the wood of the ceiling and the support for the rooms above it when the ground floor becomes weak and dilapidated until it is sound. He is compelled to make the repairs or to sell it to someone who will repair it.

[This is when someone owns the rooms above him. If the ground floor becomes weak, it is feared that the house will collapse. The owner of the ground floor must make the repairs since he is able to do that. He is responsible for the wood of the ceiling and the supports. Since the

solidity of the house depends on the occupant of the ground floor, he must either repair it or be made to. If it is sold to someone else and he refuses to repair it, then must either repair it or sell it to someone who will put it right.]

38.16b. Alterations not allowed

"There is no harm nor exceeding harm done." He must not do anything which will harm his neighbour: like opening a window facing him by which he can see his neighbour, opening a door directly in front of his door, or digging anything that will harm his neighbour, even in his own property.

[This is a sound hadith. There is no harming the one who does not harm you. That is the meaning of "no harm". There is no doing to him more than he does you and so exceeding his harm. As for the like of his action or less than it, that is permitted as Allah says, "*So if anyone oversteps the limits against you, overstep against him the same as he did to you*." (2:194) This is in relation to the common people. As for the great people and the elite, they meet evil with correctness.

If there already is a window onto the house of the neighbour, he does not have to block it, but he is forbidden to look at his neighbour from it so that the male can be distinguished from male. He does not open a door opposite his neighbour because that would entail looking at the private parts of his neighbours. He does not dig something which will harm him, even if it is in his own property, like digging a well next to his wall or his lavatory.]

38.16c. Judgement on a wall

Judgement on the ownership of a wall is given in favour the one whose house has wooden or masonry joints in the wall.

[*Qumut* means the wood or palm fibre joints put in the middle of a wall to keep it from breaking and the masonry joints are stones which support the structure. The terms are interchangeable.]

38.17. Water Supplies

38.17a. Excess water

Excess water may not be denied in an effort to prevent people from grazing animals.

[The form of that is that there is pasture next to water where some people camp, desiring to graze in it and the owners of the water prevent them from getting water so that they will leave their pasture.]

38.17b. Use of wells

People with wells for their livestock have the first claim on water for their animals and then the rights of other people are the same.

[The animals of the people who own the wells water their animals and then the animals of the travellers can be watered. People are equal in the right to the water afterwards.]

[When the well are not on private land, and there is a conflict between those who dug the wells and travellers.]

38.17c. Springs or wells on private land

If someone has a spring or well on his land, he may prevent others from using it unless his neighbour's well has caved in and he has plants he fears he will lose. Then he cannot deny him his excess water. There is disagreement about whether he can take payment for that or not.

[Or if the well dries up. In this case he is obliged to let his neighbour use it with three preconditions. The neighbour has crops which depend on water, his well has collapsed and he fears the crops will be lost and he has begun to repair his well without delay. There is disagreement about whether he can take payment for that. It is related from Malik that he does, and it is stated in the *Mudawanna* that he does not. The reason is that it is an obligation to give the excess of water by way of help, so he should not take payment for it. The reason for the first opinion is that he uses the property of someone else to revive his own property.]

[Hash: The relied on position is that he does not take payment.]

38.18 Another Building Regulation

Someone should not refuse to allow his neighbour to insert beams into his wall but he cannot be compelled to accept that.

[The meaning is that it is recommended. It is confirmed that the Prophet , may Allah bless him and grant him peace, said, "No neighbour should prevent his neighbour from inserting a piece of wood in his wall." It is recommended which is why he says that he cannot be compelled. That indicates the refutation of the position of Ibn Kinana and ash-Shafi'i that he can be compelled.

[Hash: The prohibition is one of dislike.]

38.19. Damage Done by Animals

If livestock ruin crops and gardens during night, the owners of the animals are liable for that. They do not owe anything for damage done during the day.

[The details of this are in the *Muwatta'* and elsewhere. It is related from the Messenger of Allah, may Allah bless him and grant him peace, that the owners of a garden must guard it in the day, but what animals damage in it at night is the liability of the animals' owners. The place of the liability for what the animals destroy at night being that of their owner is when there is no shepherd with them. Otherwise it is the shepherd who is responsible.

[Hash: This is when he lets them loose at night and does not die them up. If he ties them up, he is not liable. It refers to animals which are normally tended, and not creatures like bees and doves for which they are not liable. When he is liable for damage, he pays the value or replaces what has been destroyed.

38.20. Bankruptcy claims

If someone finds his goods in the possession of someone who has become bankrupt, he can either take his share [with the other creditors] or recover his actual property if he can identify the individual item. If, however, the debtor has died, he must take his share with the rest of the creditors.

[If he finds his goods which he sold to a man which are not lost and for which he has not been paid before the buyer goes bankrupt, then he has this choice. He either shares with the other creditors in the property as a whole and takes his share or, if it is something like an animal or a slave, he can recover it. If it is something like wheat, he can only take a share. If the bankrupt person has died, and he has not received the price before the buyer dies, he is not more entitled to his goods than the other creditors. He must take a share.]

38.21. GUARANTEE OF DEBTS

The one who gives a guarantee is liable, and the one who guarantees the appearance of the debtor is liable if he does not bring the person unless he stipulated that he would not be liable.

[When he is unable to fully satisfy the creditor. If someone who guarantees an appearance fails to bring the debtor present at the time he is required to bring him, if is liable for the amount the debtor owes unless he stipulated that that was not binding for him to be responsible for the money if the debtor failed to appeared. Ibn 'Umar stated that if he is able to bring him and neglects it, then he is liable.]

38.22 TRANSFER OF DEBTS (*HAWALA*)

38.22a. A transfer is not revocable

If someone agrees to have his debt transferred to a third party, he cannot go back to the first debtor, even if the third party becomes bankrupt, unless the first one deceived him.

[If he deceives him, that means that he knew that the person to whom it was transferred was insolvent and still transferred it to him. If that is the case, the original debtor is not freed of responsibility and the debt reverts to the first debtor.]

38.22b. The transfer

The transfer is based on an original debt. Otherwise it is a guarantee.

[If it is not on the basis of a debt, then he is a guarantor, i.e. responsible, because a transfer is transferring the responsibility for a right to the responsibility of another. If there is no basic debt, there is no transfer,

even if the term "transfer" is used. The point of that is that the creditor can go back to the original debtor who is not free is liability by that because the guarantee does not eliminate the responsibility of the one guaranteed. It is another liability. If it had been an actual transfer, he would be free of responsibility and the one who transferred it would not be able to return to him.]

38.23. More on the Guarantee of Debts and Bankruptcy

38.23a. When a guarantor must pay the debt

A guarantor is not liable except in the bankruptcy or the absence of the debtor.

[This refers to his words that the guarantor is liable. The situation in which he is liable is the absence of the debtor when the creditor has not ready money with which he can pay the debt. If he is absent, but not far away, he is considered as present. Then he is not liable.]

38.23b. In case of death or bankruptcy

The death of the subject or his bankruptcy makes every debt he owes immediately due, but not debts which other people owe to him.

[What is meant bankruptcy is when a judge orders the stripping of his property, not just the position of creditors. That which is deferred is not immediately due. As for deferred debts becoming due by death, that is because the debt is attached to blood, and it is ended by death and the creditor no longer has a connection to liability. Therefore what was deferred becomes due immediately and the liability moves to the legacy because it is not connected to other than the two. When one is gone, only the other remains.

As for its becoming due by bankruptcy, it is because the creditors made their agreement based on full responsibility, and that is destroyed by bankruptcy and so that no longer remains.

The debts that others owe him do not become due by his death or bankruptcy, because their place, which is the responsibility, still exists.]

38.23c. A slave with debts is not sold to settle them

A slave permitted to trade is not sold in order to discharge his debts nor is his master prosecuted for them.

[The master is only prosecuted if he tells them, "Employ him" and they do so.]

38.23d. Detaining a debtor whose financial situation is unclear

A debtor may be imprisoned until he is cleared. He is not imprisoned if he is known to be insolvent.

[He is imprisoned until his state is known. When his insolvency is confirmed by the testimony of two just witnesses who testify that they do not know that he has money either public or hidden. Then he is not released until he takes an oath that he has no wealth either outward or hidden and his oath is absolute and he does obtain property, he will pay his debt, even if he any beyond his immediate needs.]

[Hash: Someone who is well off and refuses to pay his debts is imprisoned and flogged time after time until he pays what he owes. That is at the discretion of the judge.
A man is imprisoned with other men and a woman is lodged in the protective custody of a trustworthy woman.]

38.24. APPORTIONMENT OF JOINTLY OWNED PROPERTY

38.24a. Division of property

Buildings and property which can be divided without harm are divided (in case of dispute).

[Such property includes animals, goods and measured and weighed things. This is when there is a dispute and some of the owners want to divide it and some do not. The one who refuses to do that is compelled to do it.]

38.24b. Enforced sale

In the case of something which cannot be divided without harm, if one party wishes to sell it, the other partner can be compelled to sell it.

[This is something like a single slave. If the object would be destroyed by division or would be harmed by it, like a pair of leather socks, when division would destroy its use. If the partners contend about any of that and are not happy about using it jointly, and one wants to sell it while the others refuse to do that, they are compelled to sell it because it is not possible to divide it to end the dispute. Therefore it must be sold in order to end the dispute.]

38.24c. Division by lots

Division by lots is only done with the same category of thing. None of the partners can be given a price [while the other takes the goods]. If they decide to equalise the shares, the division is only permitted when they both consent to it.

[It is not permitted to draw lots when the items consist of two categories and or disparate types, like apples and peaches. Each category is put on

its own so that there no clear uncertainty in the lots. There is no paying a price since that would result in the existence of two different categories and lots can only be used in the same category.

[*Hash*: Ibn al-Hajib adds that the property on which lots are drawn is shared property. Each category is divided on its own. You cannot have one lot consist of houses and the other a garden, for instance. Doing that would involve uncertainty (*gharar*).]
An example of equalisation is when there are two garments. One is worth two dinars and the other worth one. Lots are drawn for them, and the one who gets the garment worth two dinars gives the other five dirhams to equalise them. That is only permitted with mutual consent as when one says the other, "You have a choice: either you choose that whose value is two dinars and give five dirhams or you take that whose price in one dinar and take five dirhams."]

38.25. FUNCTION OF AN EXECUTOR (*WASI*)

38.25a. Appointing an guardian-executor

A guardian appointed by the original guardian is like the guardian. A guardian can trade with the property of orphans and arrange the marriage of their slavegirls. If an untrustworthy guardian is appointed, he may be removed.

[If the basis is appointment by the father, not by the Qadi. If he is appointed by the qadi, then he cannot appoint someone else. He cannot buy his property himself. If he does that, the ruler should examine the sale. If he sees in good in it, he allows it, Otherwise, he cancels it.]

[Hash: The executor must be Muslim, adult, sane, legally responsible and reputable.]

38.25b. The sequence is which the estate is dealt with

One begins with the cost of the shroud, then paying debts, then paying bequests and then inheritance.

[After specific requirements like the umm walad and woman whose emancipation is stipulated at a certain term and the like. Then comes the cost of the shroud and then debts which are firm by evidence or admission when he was healthy or ill, but that is when there is no suspicion. Then the bequests are paid and finally the inheritance is distributed.]

38.26. SQUATTER'S RIGHTS

If someone lives in a house belonging to someone else for ten years, it then becomes his if the owner was present and then did not claim anything from him. Living in the house of a relative or in-law this for this period of time does not establish this for him.

[Or it can be land which is more general. The owner being present means present and sane, and not a relative or a partner. The owner must know about his occupation and his ownership. If he does not know and says, "I did not know it was my property while this person had it and I only just found the documentation with so-and-so," or he is an heir and claims that he did not know that it was his property, his word is accepted.

[*Hashiyya*: *Hiyaza*, which includes the claim to the right of possession. Such claims do not extend to animals and goods]
This is when he does not claim anything and nothing prevents him from claiming. If the squatter has a force and he stays, even a long time, the claim is heard. After that time his evidence is not heard because custom denies it since he was silent about the claim for this entire time outside of the right of Allah. If it is Allah's right, it is not lost by occupation,

even for a long time, as when someone occupies the road of the Muslims or a part of it or a mosque or a place which is a *waqf* for someone else.]

38.27 BEQUESTS

38.26a. Debt owed to an heir

It is not permitted for a sick person to admit to a debt owed to an heir or to state that the heir has paid him a debt he owes him.

[This is in an illness from which it is feared that he might die. He cannot affirm the debt which he owes by simple admission or say that he has been paid a debt as when he says, "So-and-so is owed such-and-such", and the form of its admission of taking it is that he says, "I took the debt which I am owed." This is because there is the suspicion that if his heirs consist of his daughter and nephew, there is basis for his daughter and so one judges by suspicion and his affirmation of taking it is only because of his love for her.]

38.26b. A bequest to perform hajj

If someone leaves an instruction in his will that the hajj be performed (on his behalf), his instruction is carried out, but we prefer a bequest of *sadaqa*.

[This is paid out of the disposable third. The Malikis prefer sadaqa to a bequest for hajj because there is no disagreement about the deceased benefiting from sadaqa whereas there is disagreement between scholars about whether the deceased benefits from the hajj. The position of Malik is that it is of no benefit for him.]

38.26b. Someone employed to perform hajj

If the one hired to make hajj dies before completing it, he receives the fee for the amount he travelled and the rest is returned. What he

spent is his liability, unless he took it on the basis that he would be paid on completing it. Then the liability is that of those who hired him. If anything is left it is returned.

[This is when he dies on the way to Makka or before completing the practices of hajj. He is paid according to the distance he travelled in respect of difficulty or ease and fear, not simple distance. So a quarter of the distance may be equal to half the wage. The rest is returned because he is only entitled to the wage by completing the task. He is liable for as spent because it is recompense for the task.

In the second case the liability is that of the hirers since they were negligent in not stipulating liability which is more careful. The form is that he is given money to make hajj and it is his if he completes it, and he has nothing if he does not.]

CHAPTER 39: SHARES OF INHERITANCE

Fara'id is the plural of *farida*, meaning "duty". Part of its excellence is indicated by the words of the Prophet, may Allah bless him and grant him peace, "Learn the shares and teach them to people. Knowledge will be taken away and seditions appear until two people disagree about the share and do not find anyone who can decide between them." (al-Bayhaqi and others)

39.1. LIST OF HEIRS

39.1a. Male heirs

There are only ten male heirs: the son, the son's son, to the furthest generation, the father, the paternal grandfather, to the furthest generation, the brother, the son of the brother, to the furthest generation, the paternal uncle, and the son of the paternal uncle, to the furthest generation, the husband and the male client.

[Brothers includes full brothers and half brothers by the father (consanguine). The same is true of paternal uncles. The client is one who has been freed by a person.]

39.1b. Female heirs

There are only seven female heirs: daughter, daughter of the son, mother, grandmother, sister, wife and female client.

[This is the full sister or the consanguine sister.]

39.2. HUSBAND

If the wife has no children or grandchildren, the husband inherits half. If she has children or grandchildren by him or by another husband, he gets a fourth.

[If she has children by another marriage or by illicit sex or *li'an*, by a free man or slave, Muslim or unbeliever. This is taken from the Book of Allah.]

39.3. WIFE

If the husband has no children or grandchildren, the wife inherits a fourth. If he has children or grandchildren by her or by another wife, she gets an eighth.

[This is taken from the Book of Allah.]

[*Hashiyya*: In the case of spouses inheriting from one another, they must both br Muslim, free, and not the killer of the spouse, and the marriage must be sound.]

39.4. MOTHER

39.4a. The basic rule

A mother inherits a third from her son if he leaves neither child or grandchild or two or more brothers except in two cases.

[When there is any sort of sibling, full or half, provided they are free Muslims and not the killers.]

39.4b. The first exception

The first is when he leaves a wife and both parents. Then the wife gets a fourth and the mother a third of what remains and then the rest goes to the father.

[What remains is two shares. If the grandfather is in place of the father, she takes an actual third of the estate because she inherits the share with him and if it is the father, it is by virtue of agnation (males who are residual heirs).]

39.4c. The second exception

The second is when a woman leaves a husband and both parents. The husband gets a half and the mother a third of what remains and the rest is taken by the father.

[She receives a sixth. The husband has three sixths, the mother one sixth, and the two remaining sixths go to the father.

These two cases are called *Gharawayn* because the mother is "duped" (*gharrat*) in them, and takes a third in expression, not meaning because in the first she has a fourth and in other a sixth.]

39.4d. '*Awl* (Accommodation)

In other cases, the mother receives a third unless her share is decreased by '*awl* (accommodation).

[In other than these two cases, she receives a full third. Accommodation occurs when there are more shares than the estate. That is when the number of shares is multiplied, as 24 shares is like two-thirds and two-sixths. The share is not denied by it, and it is not possible to cancel some of the shares without an excluder, and none of those with a share is singled out for decrease. Then the number of shares are increased so that

the loss is divided out between all the people of shares after the people owed debts. That is called *'awl* and the originator was al-'Abbas and the Companions agreed with him.

That arose when a woman died in the khalifate of 'Umar, may Allah be pleased with him, leaving a husband and two sisters. The Companions met and he said to them, "Allah has allotted half to the husband and two-thirds to the sisters. If I begin with the husband, the sisters will not have their right. If I begin with the sisters, the husband will not have his right." Al-'Abbas ibn 'Abdu'l-Muttalib suggested *'awl*. He said, "I think that when a man dies and leaves six dirhams, and a man is due three and another four that the property is divided into sevenths." The Companions adopted his position.]

39.4e. When the mother gets a sixth

If the deceased leaves a child or grandchild through by a son or two or more brothers, of whatever sort, then the mother has a sixth.

[He mentions the exclusion off the mother from a third to a sixth by two brothers. That is the school of all the Imams except Ibn 'Abbas. He said that she is only excluded by three brothers, seeing evidence in the words of Allah, "*If you have brothers or sisters your mother gets a sixth*" (4:11) The disagreement derives from the minimum of the plural.]

39.5. FATHER

39.5a. When the father is the sole heir

If the father is the only heir, he inherits the entire the estate of his child.

[Whether it is a son or a daughter.]

39.5b. When there are other heirs

If the decreased has a son or grandson by the son, the father takes a sixth. If the deceased has neither child or grandson by the son, the father has a sixth and all the others entitled to shares are given their shares and then he takes the rest.

[Other heirs are the daughter, daughter of the son, or two of more of them. If there is anything left, he takes it by virtue of agnation since it is confirmed that the Prophet, may Allah bless him and grant him peace, said, "Give shares to their people, What is left is for the most entitled male." That exists in the father.]

39.6. Son

39.6a. When the son is sole heir

An only son inherits the entire estate, or he takes what is left after the shares of those entitled to a share, like a wife, parents, or grandfather or grandmother.

[He inherits it all when there is no one else entitled to a share. When he has one or more brothers, they inherit all the property and it is shared between them. One begins with the people of shares because they are the basis in respect of the Ôasaba because they have specific shares in the Book and Sunna. If he only has a wife, the question is one of eighths. She has an eighth and he has the rest. If he has only two parents, it is in sixths. The parents have two-thirds and he has the rest. If there is a grandmother or grandfather, it is also sixths and the grandfather or grandmother has a sixth and he has the rest. If he has a mother and two parents, it is 24ths and the wife has the 3 of her eighth and the parents the 8 of their third and the rest is his.]

39.6b. A son's son

A son's son is in the position of the son when there is no son.

[This is the case if there is no direct son, but he is not like the son in all aspects because the son is never dropped whereas the son of the son is dropped if there are two parents, two daughters and the son's son. He also does not exclude those the son excludes. He also is not the same in respect of agnation. The son is an agnate in relation to the daughters but the son's son is not.]

39.6c. A son and a daughter

If there are a son and a daughter, the male receives twice the share of the female. It is the same whether there are several or few sons and daughters. They inherit at this ratio either the entire estate or what is left after people take their shares.

[This ratio applies is either case. For instance, there are five sons and five daughters. They divide the property into fifteen shares and it is distributed in that manner.]

39.6d. If there is no son

The son of a son is like the son in his absence in respect of inheritance and exclusion of other heirs.

[This is repeated.]

39.7. DAUGHTERS

An only daughter inherits half the estate. Two daughters inherit two-thirds of it. If there are more, they do not receive more than two-thirds.

[Her inheritance is based on the words of Allah, "*If she is one on her own she gets a half.*" (4:11) The case of two or more is also based on what the Prophet, may Allah bless him and grant him peace, did.]

39.8 Son's Daughters

39.8a. Their ruling

The daughter of a son is like a daughter when there is no daughter. Similarly, the son's daughters are like daughters when the deceased himself has no daughters.

[So the consensus is that she inherits half, and if there are two or more they inherit two-thirds.]

39.8b. A daughter and a son's daughter

If there is a daughter and the daughter of a son, the daughter gets one half and the daughter of the son gets a sixth to complete the two-thirds. If the son has several daughters, they do not get more than the sixth if they have no brother with them. The remainder goes to the agnates.

[Her receiving a sixth is based on the judgement of the Prophet, may Allah bless him and grant him peace. The case when there is a brother present will be discussed later.]

39.8c. If there are two daughters

If there are two daughters, then the daughters of the son get nothing unless they have a brother. In that case the remainder of the estate is divided between them, the male getting twice the share of the female.

[They get none of the sixth because the two-thirds is already complete without them. If nothing remains, they get nothing because they inherit by agnation and the agnate only inherits what is left over.]

39.8d. A male below the son's daughters

When there is a male in the generation below them, the estate is also shared between him and them.

[On the basis of agnation.]

39.8e. A son's daughters

It is the same if the daughters of the son inherit a sixth with the daughter, and in the generation below them there are daughters of a son or a generation below them which contains a male: the residual estate is shared between him and his sisters or paternal aunts in the same way. The daughters of the son who take a share in the two-thirds have no share in the residual estate.

[This causes agnation and so a male receives the portion of two females. Ibn 'Umar said that the son of the son causes agnation in his generation and above, but not below.]

39.9. Full and Consanguine Sisters

39.9a. The share of the full sister

A full sister inherits half. Two or more sisters share in two-thirds.

[Since Allah says, "*If a man dies childless but has a sister she gets half of what he leaves*." (4:175) The two-thirds is because Allah says, "*If there are two sisters they get two-thirds of what he leaves*."]

39.9b. Brothers and sisters

If there are several full or consanguine brothers and sisters, then the entire property is divided between them, with the male receiving the share of two females, whether they are many or few.

[Because Allah says, "*If there are brothers and sisters the males receive the share of two females*." (4:175)]

39.9c. Sisters' share when there are daughters

If there are daughters, then the sisters become like the '*asaba* (agnates) inheriting what is left over, but they are not enriched at the daughters' expense.

[They receive no specific share. They take what is left on the basis of agnation, in taking the residual estate, but they are not like the agnates in taking all the estate.]

39.9d. When they inherit nothing

Brothers and sisters receive no inheritance when there is a father or a son or a grandson.

[Because they are a lower generation than the father. When someone is lower than someone else, he does not inherit along with him. He is excluded and omitted. In the case of a son, he is stronger in agnation than them. As for the second, the son of a son has the same position as the son.]

39.9e. The absence of full siblings

In the absence of full siblings, consanguine siblings are like full siblings, both male and female.

[If there are several. If there is only one she inherits half. If there are males and females, the estate is divided between them with the male getting twice the share of a female.]

39.9f. Remaining cases

If there is a full sister and one or more consanguine sisters, the full sister gets half and the remaining sisters share in the sixth. If there are two full sisters, the half-sisters receive nothing unless there is a brother with them. Then they take whatever remains, with the male receiving the share of two females.

[The sixth is to complete the two-thirds. Ibn MasÔud said that the consanguine sister has no share in this case. If there are two sisters, they take the full two-thirds and the others are removed and only inherit on the basis of agnation.]

30.10 UTERINE BROTHERS AND SISTERS

39.10a. Their share

The inheritance of a uterine sister and brother is the same: a sixth, the same for either.

[If there is only one and there is no distinction between male and female.]

39.10b. When there are several

If there are several of them, then the third is shared between them, each receiving the same amount.

[Whether males, females, or both. They agree that what is meant by the brother and sister is His words *"If a man or woman has no direct heirs but has a brother or sister, each of them gets a sixth,"* (4:12) is only the

uterine sister. The one without heirs is the one who has no children or parent.]

39.10c. When they are excluded

They are excluded from the inheritance by a child and his or her children, a father, or a paternal grandfather.

[This is complete exclusion. "Child" is a daughter or a son. A maternal grandfather does not exclude because he does not inherit.]

39.11. FULL AND CONSANGUINE BROTHERS

39.11a. The share of brothers

The brother inherits the entire estate if he is the sole heir, if he is full brother or has the same father (consanguine). A full brother excludes a consanguine brother.

[He is all 'asaba. A consanguine brother has this judgement when there is no full brother. If there is a full brother, he excludes the half brother.]

39.11b. When there are several brothers

If there is one or more brothers and sisters, full or consanguine, then the estate is shared between them, with the male having twice the share of a female.

[This is when there are no full brothers. This is repeated.]

39.11c. When there are other fixed heirs as well

If there are those entitled to specific shares as well as the brother, one begins with those with specific shares and he takes what is left. Similarly what remains goes to the brothers and sisters, with a male receiving twice the share of a female.

[That is because the Messenger of Allah, may Allah bless him and grant him peace, said, "What remains after the shares goes to the more entitled man," and the brother is included in this. So what is left goes to the full brothers or if, there are none, the consanguine brothers, and that is divided between them.]

39.11d. If nothing is left

If nothing is left, they receive nothing unless there are uterine brothers among the people of shares who inherited a third. Then any full siblings, male and female, share equally with the uterine brothers in their third. This share is called "shared" (*mushtarika*). Consanguine brothers do not share with the uterine brothers because they do not have the same mother.

[Males only, or females only, or both. The rest of the heirs inherit two-thirds, like the wife, mother or grandfather and that completes the estate.

They share by virtue of having the same mother.

It is called "shared" because the brothers share in the third, and is every question in which there is a husband and mother or grandmother, and two or more of the mother's offspring, and '*asaba i*n the form of full siblings. This is also known as the Himariyya case. That is because the case was presented to ÔUmar ibn al-Khattab, may Allah be pleased with him, and he wanted to judge the elimination the full brothers, and one of them said, "Give. Even if our father was a donkey (*himar*), do we not have the same mother?" So he judges a third for all of them equally, full

and uterine siblings, the portion of the man the same as the portion of the female.]

39.11e. Remaining sisters are accommodated

If there remains any full or consanguine or sisters, accommodation is made for them.

[The sharing is invalid and it becomes one of the questions of '*awl*. The accommodation is that a half becomes three-sixths and is reduced to three-tenths. The two-thirds of the sisters becomes four-sixths, and is reduced to four-tenths.]

39.11f. Other cases

If there is only one uterine brother or sister, the case is not *mushtarika*. The residual estate goes to the siblings whether they are males, or males and females. If there are only full or consanguine sisters, there is accommodation for them.

[What is left is a sixth. If there are males and females, the males receive twice the share of the female.]

39.11g. Consanguine brother

A consanguine brother is like the full brother in the absence of a full brother, except in the case of *mushtarika*.

[The full preconditions for full brotherhood are missing as they do not share the same mother.]

39.12. NEPHEWS

The son of a brother is like the brother in the absence of the brother, whether he is a full or consanguine brother. The son of a uterine brother does not inherit.

[He is in that position in agnation in particular, not in all aspects. One of the aspects in which he differs is mentioned. The reason that the son of uterine nephew does not inherit is that his father is one of the people of specific shares and does not enter into agnation, and so he is like the son of the daughter.]

39.13. EXCLUSION OF HEIRS

39.13a. The full brother

A full brother excludes a consanguine brother, but a consanguine brother takes precedence over the son of a full brother. The son of a full brother takes precedence over the son of a consanguine brother.

[This point is repeated. A consanguine brother is a degree higher than the son of a full brother.]

39.13b. Exclusion and the paternal uncle

A son of a consanguine brother excludes a full paternal uncle. A full paternal uncle excludes a consanguine paternal uncle. A consanguine paternal uncle excludes the son of a full paternal uncle. The son of a full paternal uncle excludes the son of a consanguine paternal uncle. So the nearer relative always has the greater entitlement.

[This is all by the closer level of degree, and the principle is general to all relatives.]

39.14 NON-HEIRS

39.14a. Those who are non-heirs

Those who do not inherit include the the children of sisters of whatever sort, the sons of daughters, the daughters of a brother of whatever sort, the daughters of a paternal uncle, the maternal grandfather, and a uterine paternal uncle.

[Al-Fakhani said some texts have, "Nor the maternal grandmother." It is also includes uncles.]

39.14b. Slavery is an impediment

A slave does not inherit, nor does a slave who is in the process of being freed.

[This includes the umm walad and mudabbar.]

39.14c. Difference of religion is an impediment

A Muslim does not inherit from an unbeliever nor an unbeliever from a Muslim.

[The majority position is that a Muslim does not inherit from an unbeliever and there is consensus that an unbeliever does inherit from a Muslim.]

39.14d. Others

Others who do not inherit are: the son of a uterine brother, the maternal grandfather and the mother of the maternal grandfather.

[Already mentioned.]

39.15. MORE EXCLUDED HEIRS

39.15a. Others who are excluded

Nor does the mother of the paternal grandfather inherit along with her son, the father of the deceased.

[She, in fact, does not inherit at all.]

39.15b. Uterine brothers

Uterine brothers do not inherit with the paternal grandfather, nor with the sons or daughters or grandchildren through a son. Siblings of any sort do not inherit with the father.

[This is repeated.]

39.15c. Paternal uncles

A paternal uncle does not inherit with the paternal grandfather nor the son of a brother with the paternal grandfather.

[Because the level of the grandfather is that of the brother, and the brother excludes his son and those in his rank.]

39.16 IMPEDIMENT OF HOMICIDE

39.16a. Homicide is a bar to inheritance

The murderer does not inherit either the estate or blood money. Someone guilty of accidental homicide does not inherit any of the blood money, but does inherit from the estate.

[This is about the person who kills the deceased. As for the one who kills deliberately without transgression, like the ruler executing someone

from whom he inherits for a hadd obliged on him, or like someone killing his father who is a bandit, they do inherit.

In the case of accidental homicide, he is excluded in one place and not in another. For example, there are two brothers and one of them kills the other, then the mother inherits a sixth from the brother and the rest is for the two brothers together, because the brother excludes her from a third to a sixth and she inherits a third of the blood money because the killer does not inherit blood money and so he does not exclude her.]

39.16b. Other impediments

Other impediments to inheritance are negation of lineage by the li'an divorce, and difference in the order of death, as when a relative dies on a journey or under a collapsed building and the earlier is unaware of that the precondition is missing, i.e. the death of the heir must be after the death of the one who leaves the inheritance.

39.17. Effect of Exclusion

Anyone who does not inherit for some reason cannot then exclude another heir.

[Except in the five cases mentioned in the Usul.]

39.18. Inheritance by a Spouse Divorced or Married in the Final Illness

39.18a. A woman finally divorced in the final illness

A woman who has been trebly divorced in the final illness of her husband inherits from her husband, but if she dies first, he does not inherit from her. The same ruling applies if the divorce was a single one and he dies of that illness after her '*idda* has finished.

[She inherits from him because the Prophet, may Allah bless him and grant him peace, forbade excluding an heir by doing that. 'Uthman judged that the wife of 'Abdu'r-Rahman ibn 'Awf inherit from him after her '*idda* was over. He had divorced her absolutely when he was ill and he died of that illness. The man does not inherit from her because she is unrelated to him by virtue of the divorce. Even if her '*idda* is over, she still inherits if he dies of that illness.]

39.18b. Divorce while he is in good health

If someone in good health pronounces a single divorce against his wife, they still inherit from one another as long as she is still in her '*idda*. If the '*idda* has finished, they do not inherit from one another.

[There is no suspicion about divorce when the person is healthy.]

39.18c. Marriage in the final illness

If a man marries in his illness, they do not inherit from one another.

[Because the marriage is invalid.]

39.19. GRANDMOTHERS

39.19a. The ruling

A maternal grandmother inherits a sixth as does a paternal grandmother.

[Absolutely because it is established that the Prophet, may Allah bless him and grant him peace, gave her a sixth. (Muwatta')]

39.19b. When there are two grandmothers

If there are both of them, then the sixth is shared between them, unless the maternal grandmother is a degree closer, in which case she is more entitled to it because there is a text about her. If it is the paternal grandmother which is closer, then the sixth is shared between them.

[The other inherits by way of analogy with the maternal grandmother. The sixth is equally divided unless there is a generational difference. If, however, it is paternal one which is closer, they share in the sixth because her position is based on analogy, not text.]

39.19c. Which grandmothers inherit

According to Malik, only two grandmothers inherit: the father's mother and the mother's mother or their respective mothers. Zayd ibn Thabit is reported to have allowed three grandmothers to inherit: one on the mother's side and two on the father's side: the father's mother and the mother of the father's father. None of the Khalifs is reported to have allowed more than two grandmothers to inherit.

[They take their place in their absence since the nearer excludes the further as we stated.]

39.20. PATERNAL GRANDFATHER

39.20a. His share

If there is only the paternal grandfather, he takes the entire estate.

[This is when there are no full or consanguine brothers or sisters or any others of the people of specific shares, like a daughter and daughter of a son.]

39.20b. If there are other heirs

If there is also a son or a son's son, the paternal grandfather takes a sixth. If there are people with specific shares other than brothers and sisters, he is given a sixth. If there is anything left over, it is his.

[If there are people with specific shares, he has a sixth of the basic estate as was mentioned. After the grandfather takes the sixth and the people take their shares, then he inherits any residual estate by agnation.]

39.20c. When there are brothers with the people of shares

If there are also brothers along with the people of shares, the grandfather has three choices and he can select whichever he prefers, i.e. whichever is best for him. He can share with the brothers, take a sixth of the total estate, or take a third of the residue.

[Full brothers or consanguine brothers. He can choose whichever course he prefers.]

39.20d. When there are only brothers

If there are only brothers inheriting with him, he shares with them if it is one or two brothers, or what is their equivalent: four sisters. If there are more than two brothers, he takes a third. So when inheriting with brothers, he takes a third, or he divides the estate with them, whichever seems better for him.

[And there are no people with specific shares. A third refers to the total estate.]

39.20e. Consanguine brothers

Consanguine brothers inherit with the grandfather in the same manner as full brothers if there are no full brothers. If there are both full brothers and consanguine brothers, the full brothers may count the consanguine brothers with them to reduce the share of the grandfather. Then they are more entitled than them to that.

[An exception to this is the *mushtarika* case which was already mentioned.]

39.20f. An exception

An exception is when there is, in addition to the grandfather, a full sister who has a consanguine brother or sister or both. She takes her half of the estate and surrenders what is left to them. Sisters are not enriched at the expense of the grandfather, except in the case o*f al-gharra*' which will be explained later.

[She takes what she would have taken if she had been alone. The sister does not get anything when there is a grandfather except in the case known as the Akdariyya or Gharra', in which the sister receives a share with the grandfather.]

39.21 THE PATRON (*MAWLA*)

39.21a. The ruling of the client

When the *mawla* (patron) is the only heir, he or she inherits all of the estate, whether the patron is a man or a woman. If there are people with shares as well, then the patron takes what is left after they have taken their shares.

[The mawla is the emancipator. When the deceased has no one with a fixed share nor any agnates, the emancipator inherits by virtue of

agnation. The *wala'* goes to the person who sets a slave free because the Prophet, peace be upon him, said, "The *wala'* is to flesh like flesh of lineage."

If there are those entitled shares, and there are no agnates, he takes the remainder because he inherits by agnation and that was the judgement of the Prophet, may Allah bless him and grant him peace. An example is when he leaves a daughter: she takes half and he takes the rest.]

39.21b. When there are agnates

A patron inherits nothing when there are agnates (*'asaba*), but he is more entitled than uterine relatives who have no share in the Book of Allah Almighty. Only uterine relatives who have a share in the Book of Allah inherit.

[When the deceased has agnates because they inherit by lineage. He is more entitled than uterine relatives because they have no agnation and so share.]

39.21c. A female patron

A woman only inherits by *wala'* from those she herself set the slave free, or through subsequent freeing or childbirth (by the slave she set free).

[Only those she herself set free, or those set free by the one she set free, without or without her permission. Ibn 'Umar says, "Freeing is clear since a woman frees a slave and he in turn he frees a slave. The freed slave dies first and then the one he freed dies."

As for childbirth, there are further details regarding it. When she frees a slavegirl who is pregnant, then the wala' of the slavegirl and the child belong to the woman who set her free. The *wala'* of those the freed slavegirl bears after being frees goes to the patron of their father, i.e.

those who freed the father. If the father has no patrons, it goes to the treasury.]

39.22 ACCOMMODATION BY REDUCTION (‘AWL)

39.22a. When it takes place

When the combined shares known in the Book of Allah are more than the estate, then all of them are reduced and the shares are reduced proportionately.

[What is said in this question is that the asl of the share is established to solve the case. Each heir with a fixed share is given his share and then they are all added together. If the total is equal or less than the total estate, there is no accommodation. If, however, the sum is greater than it, you know that there must be accommodation, like the Minbariyya case. Its thirds, sixth and eighth are more than 24, When there is accommodation, the share is put in the place it reaches in the shares, which is 27. The Minbariyya is an example of that. It is a wife, two parents, and two daughters. The two daughters have two-thirds, each of the parents has a sixth and the wife has an eighth. The share of the parents is combined and we are content with one, which is one of six. We add to it the share of the daughters. The share of the wife agrees with the product of six by half and so 3 times 8 gives 24. The daughters have 16 for the 2/3, the father's 6 is 4, and the mother has 4. This is 24. Then we need the wife's share, so accommodate her eighth into three shares and then the total is 27.]

39.22b. Al-Gharra'

There is no accommodation for a sister when there is a grandfather except in the *gharra'* case. This is when a woman dies leaving a husband, mother, full or consanguine sister and a paternal grandfather. The husband gets half, the mother a third, and the

grandfather a sixth. Since the estate is exhausted, there must be accommodation for the sister's share of half, which is three. Then the share of the grandfather is added to her share, and the total of that is divided between them in thirds. She has a third and he has two-thirds, and so there are 27 shares.

[Malik named the case this. The question is one of sixths. Half is 3, a third is 2 and a sixth is one. So by accommodation, the question becomes one of 9. Then the grandfather says to the sister, "You cannot have more in the inheritance because you are with me like a brother, so return what you have, which is 3, to what I have, which is a share so that we can divide it with the male having twice the share of a female. Four to three is not sound and does not agree and so 3, the number of the separate parts for accommodation of the shares, is multiplied, which gives 9 and so it is 2: the 3 for the husband multiplied into the 3 by 9. The sister and grandfather have 4 multiplied by 3 which is 12 and the sister takes her third which is 4 and the grandmother takes her third, which is 8.]

CHAPTER 40. A GENERAL CHAPTER ON THE LEGAL STATUS OF VARIOUS PRACTICES

This deals with things which are *fara'id* (obligatory), mandatory or stressed *sunna* or recommended. He starts with *fiqh* topics:

40.1. *WUDU'*

40.1a. Its status

***Wudu'* for the prayer is obligatory. It is derived from *wada'a* (cleanliness).**

[It is obligatory for both obligatory or voluntary prayers. Zarruq said, "This is outwardly by removing filth and inwardly expiation of wrong actions." Lest someone imagine that all its elements are obligatory, he goes into further details.]

40.1b. Sunna elements

However, rinsing the mouth, inhaling water through the nose and wiping the ears in it are sunna.

[Each of these parts is a sunna.]

40.1c. Siwak (Cleaning the teeth)

Siwak is recommended and desired.

[This is when doing *wudu'*. It is very desirable.]

40.1d. Wiping over leather socks

Wiping over leather socks is an allowance (*rukhsa*) and mitigation.

[It is permitting something normally not allowed. It is permitted both while resident and while travelling with certain preconditions which were already mentioned.]

40.2. GHUSL

40.2a. Obligatory *ghusl*

***Ghusl* on account of *janaba*, menstruation and lochia is obligatory.**

[*Janaba* is due to ejaculation or penetration.]

40.2b. *Sunna ghusl*

The *ghusl* on *Jumu'a* is sunna.

[It is a stressed sunna. If it is for attending the *Jumu'a*, it is mandatory.]

40.2c. Recommended *ghusl*

A ghusl for the two *'ids* is recommended.

[This is the well-known position. It is also said that it is *sunna*.]

40.2d. *Ghusl* when becoming Muslim

It is obligatory for someone who becomes Muslim to perform *ghusl* because he is in *janaba*.

[This is a general assumption. The *ghusl* is on account of *janaba*. If it is verified that there has been no *janaba*, it is not mandatory.]

[*Hashiyya*: The well-known position is that one has a *ghusl* before saying the *shahada*.]

40.2e. Washing the dead

***Ghusl* for the dead is a *sunna*.**

[Washing him unless he is a martyr from a battle or a miscarriage who has not cried. It is forbidden to wash the martyr.]

[*Hashiyya*: The well-known position of the Maghribis is that it is *sunna* while the Iraqis say that it is *fard kifaya*.

40.3. THE PRAYER

40.3a. The obligatory prayer and its elements

The five prayers are obligatory, as is saying the *takbir al-Ihram*. The rest of the *takbirs* are sunna.

[Hash: Saying, "*Allahu akbar*". This is for those who can say it properly. If one cannot properly articulate it, he begins the prayer by the intention. Ashhab said that all the takbirs are one sunna which differs from the position of Ibn al-Qasim that each one is a *sunna*.]

Beginning the prayer with the intention of performing the obligation is obligatory.

[The intention is within the words of the *takbir*. If it is later than that, it is not satisfied. Nor is it satisfied if it is a lot before it. If it is made a little before it, it satisfies the requirement. The most complete form is that the intention accompany the *takbir*.]

Raising the hands is sunna.

[Raising the hands only refers to the *takbir al-ihram* and not the rest of the *takbirs*. It is also said that it is recommended.]

[They are raised opposite the ears or a little below them.]

Recitation of the *Fatiha* in the prayer is obligatory and reciting more of the Qur'an is a mandatory sunna.

[Recitation of the *Fatiha* is obligatory for the imam and the person praying alone in every *rak'at*. The obligation is satisfied by the imam in the case of someone following an imam.]

Standing, bowing and prostration are obligatory.

[Standing in the prayer is obligatory for the one who is able to do it. If someone omits any of the obligatory standing, bowing and prostration, the prayer becomes invalid.]

The first sitting is sunna and the second is obligatory.

[The first sitting contains the two *tashahhuds*.]

Saying the *salam* is obligatory and turning the head to right while saying it a little is *sunna*.

[The final *salam* which ends the prayer is obligatory for every prayer, but not the prostration of recitation.]

Not speaking in the prayer is obligatory and the *tashahhud* is *sunna*.

[The only speaking allowed in the prayer is to correct the imam, which should be kept to a minimum or else it invalidates the prayer. The two *tashahhuds* are *sunna* according to the well-known position.]

40.3b. Qunut

The *qunut* in the *Subh* prayer is good, but not sunna.

[The *qunut* done silently is recommended, but not a strong sunna and so there is no prostration owed by the one who forgets it.]

Facing qibla is obligatory.

[Facing the qibla is obligatory in every prayer with bowing and prostration and other prayers like the funeral prayer, except in intense fear in face of the enemy or illness when there is no one to move the invalid towards qibla. He then prays however he can.]

40.4. OTHER PRAYERS

40.4a. The Jumu'a prayer

The Jumu'a prayer and going to it are obligatory.

[Hash: It is individual obligation for every free adult male. There must be a special intention for it as Jumu'a. Al-Lakhmi, however, said that it is a *fard kifaya* and Ibn Wahb reported that it is *sunna*.]

40.4b. The witr prayer

The witr prayer is a mandatory sunna,

[Mandatory sunnas are stressed, and the most mandatory of them is the *witr*, then the *'id* prayers, then the eclipse and then the rain prayer.]

40.4c. Other mandatory sunnas

as are the two *'id* prayers, the eclipse prayer, the rain prayer, and the fear prayer.

[Hash: The position which is relied on is that the prayer for a lunar eclipse is recommended.]

40.4d. The fear prayer

The fear prayer is mandatory *sunna* since Allah Almighty commanded it. It is an act by which they obtain the excellence of the group prayer.

[Allah commanded the fear prayer when He says, "*When you are with them and are leading them in the prayerÉ*" (4:101-3) The prayer in itself is obligatory, and *sunna* in the form mentioned.]

40.5. *GHUSL* BEFORE ENTERING MAKKA

It is recommended to have a *ghusl* before entering Makka.

40.6 JOINING PRAYERS

40.6a. Rainy nights

Joining prayers on a rainy night is mitigation. The Rightly-guided khalifs did it.

[Joining *Maghrib* and '*Isha*' when it is dark and muddy. The Messenger of Allah, may Allah bless him and grant him peace, did it and he is the model as did the Rightly Guided Khalifs.]

40.6b. Joining in the hajj

Joining at 'Arafa and Muzdalifa is a mandatory sunna.

[At 'Arafa it is *Dhuhr* and '*Asr* and at Muzdalifa it is *Maghrib* and '*Isha*'.]

40.6c. Travellers

A traveller joining prayers in an urgent journey is an allowance.

[In a mandatory journey like performing the obligatory hajj or recommended or permitted journey, like a voluntary hajj or for commerce. The apparent meaning is that the journey must be urgent, and that is what is in the *Mudawwana*, but that is not a precondition in the *Mukhtasar*.]

[*Hash*: There is no allowance for it in a forbidden journey, like one involving robbery, or a disliked one, like hunting for pleasure.]

40.6d. A sick person

A sick person joining prayers when he fears he will lose consciousness is a concession. The same applies to joining them because it is easier for him.

[This is an allowance. When he joins the prayers and then does not lose consciousness at the time of the second prayer, he repeats the prayer. When he joins because of weakness, he joins them with one wudu' and then it is an easement.]

40.7. Fasting and Prayer in a Journey

Not fasting while travelling is an allowance and shortening the prayer while travelling is mandatory.

[This is in a journey in which he can shorten the prayer. He can fast or not fast. The well known position is that fasting is better. Shortening the prayer, however, is mandatory as it is one of the confirmed *sunnas*, but it is not unlawful to pray in full.]

40.8 SUPEREROGATORY PRAYERS

40.8a. Fajr

The two rak'ats of Fajr are desirable, and it is said that they are sunna.

[With a particular intention. The well-known position is that they are desirable, and the second position of that of Ibn al-Hajib, who follows Ibn 'Abdu'l-Barr.]

40.8b. Duha

The Duha prayer is supererogatory.

[The *nafila* is what is less than the sunna and the desirable.]

[*Hash*: The *Mukhtasar* states that is excellent. Its minimum is two *rak'ats* and its maximum is eight *rak'ats* with the majority of the people of the School. It is also said that it has no maximum. Its time begins with the *nafila* becomes permitted.

40.8c. Night prayers

Praying at night in Ramadan is supererogatory and there is great virtue in it. If someone does it with faith and in anticipation of a reward, he will be forgiven his past wrong actions. Praying at night in Ramadan and other times is desirable and supererogatory.

[This is the *tarawih* prayers. The Prophet, may Allah bless him and grant him peace, said in a sound *hadith*, "Whoever prays at night in Ramadan in faith and anticipation of the reward will be forgiven his past wrong actions."

[*Hash*: Night prayers are a sign of the righteous. They are best down in the last third of the night. This is the *tahajjud*.]

40.9. The Funeral Prayer

The prayer over dead Muslims is obligatory and the duty is satisfied by those who perform it. The same applies to taking them to burial. Washing them is a mandatory sunna.

[It is a *fard kifaya* or *sunna kifaya*. As for the sunna of washing, whoever says that the *ghusl* is *sunna* says that the prayer is *sunna*, and those who say that it is mandatory, say they are both mandatory. It is most likely that both are mandatory.]

40.10. Knowledge

The same is true of seeking knowledge. It is a general obligation which is satisfied by those who perform it except for that knowledge which is obliged individually for a man.

[It is mandatory for all the Muslims. Individually obliged knowledge is like *tawhid*, *wudu'*, prayer, *hajj*, buying and selling by what is confirmed and established that it is not permitted for anyone to embark on a matter until he knows the ruling of Allah in it. This is about individual obligations which no one can do for another.]

40.11. Jihad and Forts

40.11a. Jihad

The obligation of jihad is general and is satisfied by those who perform it, unless the enemy attack the settlement of a people in

which case it become obligatory for them to fight them provided the enemy are not twice their number or more.

[It is a general obligation for the Muslims as a whole. If the enemy suddenly attacks the settlement of the people, then it becomes an individual obligation for male and female, free and slave. When, however, the enemy is twice the number of the Muslims, they are permitted to flee.]

40.11b. Ribat

Ribat at the frontiers of the Muslims and defending them and fortifying them is mandatory and the duty is satisfied by those who undertake this.

[Staying at the frontiers. This is a *fard kifaya*.]

40.12 FASTING

40.12a. Obligatory Fasting

Fasting the month of Ramadan is an obligation.

[For every responsible Muslim who is not menstruating or bleeding after childbirth.]

40.12b. I'tikaf

I'tikaf is supererogatory.

[*Nafila*. It is staying in the mosque for dhikr and reciting the Qur'an. It is also said that it is sunna.]

40.12c. Supererogatory fasting

Voluntary fasting is desirable. It is desirable to fast the day of 'Ashura', the month of Rajab, the month Sha'ban, the day of 'Arafa and the Day of Tarwiyya. Fasting the Day of 'Arafa is better for someone not performing hajj than for the one on hajj.

[This is fasting at times when it is not forbidden to fast. It is better explained by the words of the Almighty, "*The steadfast will be paid their wages in full without any reckoning*." (39:10) Steadfastness is explained as meaning fasting.

'Ashura' is the 10th of Muharram.

[Hash: It is desirable to fast it based on what Muslim transmitted that the Messenger of Allah, may Allah bless him and grant him peace, said when he was asked about fasting the Day of 'Arafa. He said, "It expiates the past and future year." He was asked about fasting 'Ashura' and said, "It expiates the past year."]
'Arafa is the 9th of Dhu'l-Hijja and Tarwiya is the eight of Dhu'l-Hijja. It is better for the *hajji* not to fast the Day of 'Arafa.]

40.13 ZAKAT

***Zakat* on money, crops and livestock is obligatory. The *zakat al-fitr* is a *sunna* made obligatory by the Messenger of Allah, may Allah bless him and grant him peace.**

[*Hash*: Money means gold and silver, to exclude new *filus*, even if it is the currency. Trading good are also included.]
Zakat al-Fitr was made mandatory by the Prophet.

[*Hash*. It is said that it is *sunna*.]

40.14. Hajj and 'Umra

40.14a. Its Ruling

Making hajj to the House is obligatory and '*umra* is a mandatory *sunna*.

[It is obligatory once in a lifetime. '*Umra* is a confirmed sunna once in a lifetime.]

40.14b. Its Elements

The *talbiya* is a mandatory sunna. The intention to perform the hajj is obligatory. *Tawaf al-Ifada* is obligatory and the *sa'y* between Safa and Marwa is obligatory. The *tawaf* connected to it is mandatory and the *Tawaf al-Ifada* is more stressed than it. The *tawaf* of Farewell is *sunna*.

[The *Tawaf al-Ifada* is after the return from 'Arafa. The *tawaf* connected to *Sa'y i*s the *Tawaf* of Arrival. If it is omitted, there is a sacrifice owed for its omission. The *Mukhtasar* says that the *Tawaf* of Farewell is recommended.]

40.14c. Further Elements

Spending the night at Mina on the Day of 'Arafa is sunna. Joining prayers at 'Arafa is mandatory and standing at 'Arafa is obligatory. Spending the night at Muzdalifa is a mandatory sunna. Stopping at the Mash'ar al-Haram is commanded. Stoning the jamras is a mandatory sunna.

[There is no sacrifice owed by someone who misses the night at Mina. "Commanded" here means recommended.]

40.14d. Shaving the Head and Kissing the Black Stone

That is also true of shaving. Kissing the Black stone is a mandatory sunna.

[Shaving the head is a mandatory sunna for a man, not a woman. Kissing the Black Stone is in the first circuit.]

[*Hashiyya*: Shortening the hair is also allowed. Sacrifice is obliged for the one who omits it or delays it. For women, the duty is to shorten it.]

40.14e. Ghusl during Hajj

A ghusl for assuming *ihram* is sunna and two rak'ats at that time is sunna. A ghusl at 'Arafa is sunna and a ghusl for entering Makka is recommended.

[*Ghusl* for assuming *ihram* is sunna for both a man and a woman, even if she is menstruating or has lochia. *Ghusl* at 'Arafa is sunna for standing at 'Arafa.]

40.15. GROUP PRAYER

40.15a. Its Excellence

Doing the prayer in a group is twenty-seven times better than praying alone.

[One version has 25. It is certainly far better than praying alone.]

40.15b. The Prayer in Particular Mosques

Praying in the Masjid al-Haram and the Mosque of the Messenger, may Allah bless him and grant him peace, alone is better than praying in other mosques. There is disagreement about the difference in the amount of excellence between the Masjid al-Haram

and the Mosque of the Messenger, peace and blessings be upon him. There is no disagreement that praying in the Mosque of the Messenger, may Allah bless him and grant him peace, is better than a thousand prayers in other mosques except for the Masjid al-Haram. The people of Madina say that the prayer in the Prophet's Mosque in better than the prayer in the Masjid al-Haram, but less than a thousand times better. This is all about obligatory prayers. As for voluntary prayers, they are better done at home.

[The Mosque of Jerusalem in next in excellence. This is the disagreement about whether Makka or Madina is better. The well-known position of the School is that Madina is better. The meaning of the difference in their excellence is in the reward for action done in one of them is more than the other. There is also a difference of opinion about whether the prayer in the mosque of Madina or better or in the Masjid al-Haram. Some say that the prayer in the Prophet's Mosque is 700 times more excellent.

Voluntary prayers are better done at home because the Prophet, may Allah bless him and grant him peace, said, "Put some of your prayers in your houses."]

[*Hash*: Ibn al-Qasim related from Malik that he preferred nafila prayers at home to *nafila* prayers in the Mosque of the Prophet, may Allah bless him and grant him peace, except for visitors. He preferred that they do their *nafila* in the mosque.]

40.15c. The Difference between Prayer and *tawaf*

We prefer for the people of Makka to do supererogatory prayers than to do *tawaf*, but *tawaf* is better than the prayer for visitors because of the little opportunity they have to do.

[This is the Maliki position. This is so that they do not crowd the visitors.]

40.16. Looking at Women

It is an obligation to lower the eye and not look at forbidden women, but there is no harm in the first glance when it is not deliberate, not in looking at woman who does provoke desire nor in looking at a young woman for a legitimate reason, such as identifying her and the like. There is a similar allowance for someone proposing marriage.

[Ibn al-Qattan said that there is consensus that no major wrong action is connected to the eye, but it is the faculty which brings the greatest harm to the heart and is quickest in destroying the *deen* and this world. It is forbidden to look at a woman who is not related within the prohibited degrees or a beardless youth for pleasure since Allah tells the believers, "*Lower your eyes*." (24:30)

There is no wrong action in the first glance which is not intentional nor at looking a woman for there is no attraction for men. Identification is for marriage, or for sales purposes. The same principle applies to the doctor and surgeon, which is what is meant by "the like".

There is an allowance for someone who intends to marry who wants to know what the woman is like. This is confined to the face and hands. There is an allowance for looking at the face since the face indicates beauty and the hands indicate the plumpness of the body. The origin of that is the command of the Prophet, peace and blessing upon him.]

40.17. Immoral Speech

It is an obligation to guard one's tongue from lying, perjury, obscene language, backbiting, gossiping, and all falsehood. The Messenger,

peace and blessings be upon him, said, "Anyone who believes in Allah and the Last Day should speak well or be silent." The Prophet, peace be upon him, said, "Part of the excellence of a person's Islam is his leaving alone what does not concern him."

[This is one of the mandatory matters.]

Lying

[*Hash:* Lying is forbidden because Allah says, "*And call down the curse of Allah upon the liars...*" (3:60) and the Prophet, may Allah bless him and grant him peace, said, "There is no good in lying." The consensus is that it is forbidden.]

Perjury

[A person should guard his tongue against perjury, which is testifying to what he does not know, even it actually happened.]

[*Hash*: It is confirmed that the Prophet, may Allah bless him and grant him peace, said, "Shall I tell you of the greatest of wrong actions?" and he repeated that three times. They said, "Yes, Messenger of Allah." He said, "Associating others with Allah, disobeying parents." He was reclining and sat up and said, "And lying words and perjury." He continued to repeat until they wished he would be silent.

Obscene Language (*Fahsha*')

[He should guard his tongue from obscene language, which is every forbidden word or deed.]

Backbiting (*ghiba*)

[He should guard it against backbiting which is that someone says something about another which he dislikes behind his back. That excludes him disliking for his obedience to be mentioned, because this is praise, and praise is not like that. If he praises him for what he dislikes and does not have, that is forbidden because it is a lie, not slander.]

Gossiping (*namima*)

[Gossiping is passing on words about someone to someone else for corruption.]

Falsehood (*batil*)

[All falsehood means words since their source is the tongue. What is meant by falsehood are words and falsehood is too varied to be enumerated. It is the opposite of the truth.

Then the author offers evidence in the form of two sound hadiths. Even if they stem from specific cases, they are obligatory in general. It is generally seeking to guard the tongue against lying. In the first hadith it appears that he can choose between speaking good or being silent about it. That is not sound because some words can be mandatory, like commanding the correct and forbidding the bad. This is why it is not taken literally. It means: He should speak good or be silent about evil, i.e seeking by both courses to do good.

A person should leave all that does not concern him, which means all that does not bring him benefit in his *deen* or the Next World. That which concerns him is that whose abandonment will cause him to miss the reward. He said, "Part of the excellence of a person's Islam," not "part of a person's Islam" because that it is not the attribute of Islam, but part of its excellence.]

40.18. TAKING A MUSLIM'S LIFE OR PROPERTY

40.18a. The basic ruling

Allah Almighty has made the blood of Muslims, their property and their honour inviolable except for a right.

[Allah says, "*Do not kill any person Allah has made inviolate, except by a legal right*." (17:33) The same applies to the people of *dhimma* and treaty. Allah has made their property inviolable when He says "*Do not consume one another's property by false means*" (4:21) and the Prophet, may Allah bless him and grant him peace, said, "The worst of usury in the sight of Allah is making a Muslim's honour fair game." What is meant is speaking about his honour, which is making it fair game.]

40.18b. The exceptions to that rule

The life of a Muslim is not lawful unless he apostasies after belief, commits illicit sex after he is *muhsan*, kills someone when it is not a case of retaliation, or engages in corruption in the earth or renounces the *deen*.

[The exception to this inviolability is for a legal right, which refers to the three matters which he mentioned. In property, anyone who destroys something must pay for it.

The cases when taking life is permitted are indicated here. In the case of apostasy, he is asked to repent for three days. "Corruption in the earth" is banditry and highway robbery. Renouncing the deen is to embrace the dogma of the people of the sects about whom the Prophet, may Allah bless him and grant him peace, said, "They will pass through the *deen* like an arrow passes through game." In the *Misbah*, it goes through one side and comes out the other.]

40.19. SEXUAL AND RELATED RESTRICTIONS

40.19a. Avoiding the Unlawful

You should keep your hands from what is not lawful to you in property, body or blood. Do not let your feet move after what is not lawful for you.

[In property it is like theft. In body it is touching other than one's wife or slavegirl. Blood includes both killing and wounding.]

40.19b. Sexual Restrictions

Do not let your private parts or any of your body touch what is not lawful for you, Allah Almighty says, "*those who guard their private parts – except from their wives or those they own as slaves, in which case they are not blameworthy; but those who desire anything more than that are people who have gone beyond the limits .*" (23:5-7)

[Do not advance to illicit sex.]

40.19c. Prohibition

Allah has forbidden obscenity, whether open or secret, and approaching women sexually when they are bleeding from menstruation or lochia. He has forbidden marriage to the women who were already mentioned.

[Allah says, "*My Lord has forbidden indecency, both open and secret*." (7:3) At-Tata'i said that fawahish includes every ugly word or action which appears on the limbs or is in the consciousness and hearts. Allah forbade vaginal intercourse with women during menstruation or lochia. Other than looking is forbidden to enjoy what is between the waist and knee, even without intercourse, and from above a barrier. There is nothing wrong in looking. The confirmation of this is the words

of the Almighty, "*Do not approach them until they have purified themselves*." (2:220) He already mentioned the women it is forbidden to marry.]

[*Hash*: The consensus is that it is permitted to enjoy what is above it. As for what is below the waist other than the vagina, there are two positions. The most famous is that it is forbidden. There is disagreement about the reason for the prohibition. It is said that it is based on devotion (i.e. no logical reason) and it is said that it is feared that any child conceived from such intercourse will suffer from leprosy, and it is said that it is feared that it will harm the man. This prohibition applies to non-Muslim women as well as Muslim women because the prohibition is directed to the husband.

40.20. Doing What is Good and Avoiding Doubtful Things

40.20a. Good is commanded

Allah commanded eating what is good, which is the lawful. It is only lawful for you to eat what is lawful or to wear what is lawful or to ride what is lawful or live in what is lawful. Everything else which you use must be lawful.

[The *halal* is that which has no consequences and is not connected to the a right of Allah or a right for others, That is indicated by His words, "*O you who believe! Eat of the good things We have provided for you*." (2:171) What is meant here by eating (*akl*) is use. When you know that Allah has commanded you to eat what is lawful, it is only lawful for you to consume what is lawful. Ibn ÔAbbas said, "Allah does not accept the prayer of someone who has the *haram* in his belly." Also, "If someone eats a morsel of the haram, Allah will not accept his actions for forty days."

In riding, it is not lawful to ride a usurped or stolen mount. Living in a dwelling bought by stolen goods is unlawful.]

40.20b. Doubtful things

Besides good things there are doubtful things. If someone leaves them, he is safe, and if someone takes them, he is like someone who grazes around a private preserve: he is likely to stray into it.

[Besides the lawful, there are things whose legality is uncertain. A private preserve linguistically is that which is protected by power and which others are forbidden to graze in it. What is meant is to avoid the doubtful and confine oneself to the lawful. This is based on the famous hadith: 'The *halal* is clear and the *haram* is clear. But between the two there are doubtful things about which most people have no knowledge. Whoever exercises caution with regard to what is doubtful, shows prudence in respect of his deen and his honour. Whoever gets involved in the doubtful things is like a herdsman who grazes his animals near a private preserve (*hima*). He is bound to enter it."]

40.21. INJURY TO PROPERTY RIGHTS

Allah has forbidden taking property falsely. False acquisition includes misappropriation, transgression, treachery, usury, bribery, gambling, risk, adulteration, deceit and duping.

[i.e. taking it in an impermissible manner. What is meant is not actually "eating" [The text uses '*akl*']. It is a metaphor for taking because consumption is often done by eating.

Usurpation (*ghasb*) is taking wrongful possession of someone else's property.

[*Hash*: This is not like highway robbery (*hiraba*) where the rightful owner has no access to help.]

Transgression (*ta'addi)* is in the *'ariyya* and renting.

[*Hash*: Like increasing the size of the land loaned to a person or increasing the burden carried by a rented animal.]
Treachery (*khiyana*) is to be treacherous towards someone regarding his property, family or trust or himself.

Usury is to increase the price or term in a manner not permitted.

Suht is a bribe which a witness takes for his testimony or a judge for his rulings.

[*Hash*: This also includes things like the earning of a prostitute.]
Gambling is earning by backgammon and other forms.

Risk (*gharar*) is excessive risk like buying a bird in the air or a fish in the sea. A small risk is allowed because sales cannot be achieved without it like grains sold which might contain some mud.

Adulteration (*ghashsh*) is to mix something base with the goods.

[*Hash*: Other forms of this is perfuming garments and watering animals after giving them salt (so they appear plump).]
Deceit *(khadi'a*) is by word or deed to achieve a worldly desire. This is like when he says to a man who comes to him, "Your day is blessed. You have your desire," until he buys from him. Duping (*khalaba*) is like deceit.

40.22. FORBIDDEN MEAT

40.22a. Meat which is forbidden

Allah has forbidden carrion, blood, pork and what is hallowed to other than Allah and what is sacrificed to other than Allah, and that whose death has been caused by falling from a mountain or being hit

with a stick or something else, or strangled with a rope or something else.

[Carrion other than that of the sea.

[*Hash*: There is disagreement about the reason for the prohibition of the first three. It is said that is a pure act of devotion. It is said that the reason is logical: carrion is dangerous to the health, blood causes the heart to become hard, and pork removes jealousy (i.e. leads to open lewdness).]
"Hallowed" means slaughtered with the voices raising mentioning other than Allah, like the name of the Messiah. He also forbade what is sacrificed to things like idols. There is nothing wrong, however, in eating the food of the People of the Book, which is a seeming contradiction inasmuch as the slaughtered animals of the People of the Book are mostly directed to 'Isa, for instance, which would be slaughtering for other than Allah. Ibn 'Umar answered what was said here means the sacrifices of the Magians. In short, it would seem that the slaughtered animals of the People of the Book are absolutely eaten, whether they are hallowed to other than Allah or not, but that is not the case. The *fiqh* of the matter is that the animals of the Kitabis are not lawful when they are specifically hallowed to other than Allah and the slaughtered animals of the Magians are never lawful.

What falls from a mountain is not eaten, even if it is slaughtered because one does not know what the cause of death was, Helping to die is with an arrow or stick or the like the stone. Strangled animals includes what is strangled between two branches. The evidence for prohibition is the words of Allah, "*Forbidden for you are carrion, blood and porkÉ*" (5:4)

40.22b. Dire Necessity

Unless there is dire need of such meat, like carrion.

[When one is forced to eat that, it is not unlawful to eat it, like carrion of animals which are eaten or that of animals which are not eaten, except for the human being.]

40.22c. The Extent to Which It is Allowed

When an animal reaches a state after which it cannot live due to those reasons, then there is no slaughter of it. There is no harm in someone compelled by necessity eating carrion and having his fill and taking provision from it. When he has no need of it, then he throws it away.

[This is what will customarily result in death. It appear from what he says that this is the case whether you administer the mortal blow or not. This is different from the School. The specifics in the School is that if has definitely or probably receives a mortal wound, there is no slaughter in that. If that is not the case, slaughter is accomplishes in it, even if it must die. The one forced by necessity can eat. One might think that not eating is better, but that is not the case. Eating is mandatory as Malik said since the Almighty says, "*Do not kill yourselves*." (4:29)

He eats his fill as Ibn Naji says. Malik says that he only eats what will sustain life. Malik says that he can take provision from it. It is also said that he does not do that. It is mandatory to discard it when it is no longer needed.

[*Hash*: The position of the majority is that he eats his fill.]

40.22d. Skins of Carrion

There is no harm in using its skin when it as been tanned, but one does not pray on it nor sell it.

[The skin of carrion. If it has not been tanned it is used at all. One does not pray it or sell it in the well-known position.]

40.22e. Skins of Beasts of Prey

There is no harm in praying on the skins of beasts of prey when they have been slaughtered, and they can be sold.

40.22f. Hair and Wool

The wool and hair of carrion are used as well as what is removed from them while alive. We prefer that it be washed. One does not use its feathers, horns, claws or teeth. It is disliked to use the tusks of elephants.

[Ibn Habib says that it is mandatory that it be washed. What is meant by feathers is the quills of the feathers of dead birds because the down is like hair in its purity by cutting. As for horns, they are not used at all absolutely, either the tip or the base. This is when the elephants have not been slaughtered, although some take it to mean that it is forbidden.]

40.22g. Pigs

All of a pig is forbidden, but there is an allowance to use its hair (bristles).

[The meat, fat, bones and skin of a pig are forbidden: eating it or using it. The bristles are allowed because they are not impure in the well-known position.]

40.23. FORBIDDEN DRINK

40.23a. Its Definition

Allah has forbidden drinking wine, a little or a lot. The drink of the Arabs at that time was date wine. The Messenger, peace be upon him, made it clear that if a lot of something intoxicates, then a little of it is unlawful. Any drink which drugs the mind and intoxicates it, whatever it is, is considered to be 'wine'. Furthermore, the Messenger, peace be upon him, said, "The One made it unlawful to drink it made it unlawful to sell it."

[It says in the commentary of the *'Umda al-Ahkam* that one of the shaykhs said, "Even he puts the amount on the end of a needle onto his tongue, he receives the *hadd*." What was drunk at the time of the prohibition was date wine. That was made by crushing dates and putting them in vessels and putting water on it and leaving it to ferment. A little of it is unlawful, even if it does not intoxicate.

What is meant is not everything which drugs the intellect, but what drugs it as a result of intoxicate, i.e. rapture and joy. In Muslim, the Prophet, may Allah bless him and grant him peace, said, "Every intoxicant is wine, and every wine is unlawful."

The Prophet, may Allah bless him and grant him peace, forbade selling it. Malik related in the Muwatta' that Ibn ÔAbbas said "A man gave the Messenger of Allah, may Allah bless him and grant him peace, a small water-skin of wine. The Messenger of Allah, may Allah bless him and grant him peace, said to him, 'Don't you know that Allah has made it *haram*?' He said, 'No.' Then a man at his side whispered to him. The Messenger of Allah, may Allah bless him and grant him peace, asked what he had whispered and the man replied, 'I told him to sell it.' The Messenger of Allah, may Allah bless him and grant him peace, said, 'The

One who made drinking it *haram* has made selling it *haram*.' The man then opened the water-skins and poured out what was in them."]

40.34b. Mixing Drinks

The Messenger also mixing drinks, whether they are mixed when they are set aside for fermentation or are mixed when they are drunk.

[This is a prohibition of drinking them because the prohibition is connected to actions. There are two forms. One is ripening dates and raisins and then mixing them and putting them in one vessel, pouring water on them and then leaving them to ferment. The second is when they are fermented on their own and then mixed for drinking.]

40.34c. Fermentation Vessels

He forbade storing/ fermenting juices in gourds or in pitch-lined containers.

[These are gourds which are lined with pitch which are quick to cause fermentation.]

40.24. Other Forbidden Meat

40.24a. Beasts of prey and domestic animals

The Messenger, peace be upon him, forbade eating every animal with fangs and the meat of domestic donkeys. Included with donkeys is horsemeat and the meat of mules since Allah Almighty says, "*both to ride and for adornment.*" (16:8) None of these are slaughtered except wild asses.

[It is all beasts with fangs with which it attacks and which prey, like tigers, panthers, and wolves. The fox is not a best of prey, even though it has fangs, because it does not attack or prey.

Horse meat and mules as well as donkeys are forbidden. That is because Allah mentioned flocks and said, "*There is warmth for you in them, and various uses and and some you eat*." (16:5) When He mentioned these, He only mentioned riding and adornment. That indicates that only that is permitted in th]em. Slaughtering any of these, including beasts of prey, does not render it eatable with the exception of wild asses.

40.24b. Birds of Prey

There is nothing wrong in eating birds of prey and those with talons.

[All such birds are eatable.]

[*Hashiyya*: One does not eat bats because they are unclean.]

40.25. TREATMENT OF PARENTS

It is an obligation to be dutiful to one's parents, even if they are evildoers or idolaters. One should speak kindly to them and keep their company with correct politeness, but not obey them in disobedience as Allah Almighty states. A believer must ask for forgiveness for his parents if they are believers.

[Whether they are evildoers in action or creed. Part of correct behaviour is to lead the one who is blind to the church and to carry them to it, and to give them what they spend in their festivals. He must not raise his voice above their voice. He should be kind to them in all that the ShariÔa allows.

One does not obey them in disobeying Allah as Allah says, "*If they endeavour to make you associate something with Me about which you*

have no knowledge do not obey them." (29:7) He must ask forgiveness because of the words of Allah, "*Say, 'Lord, show mercy to them as they did in looking after me when I was small*." (17:24) He does not ask forgiveness for them after their death if they are unbelievers by consensus.]

40.26 TREATMENT OF FELLOW MUSLIMS

40.26a. Love for Fellow Muslims

A believer must always protect believers and give them good advice. No one reaches the reality of faith until "he loves for his brother believer what he loves for himself." That is related from the Messenger of Allah, may Allah bless him and grant him peace.

[This is friendship and showing love to them and not doing what would alienate them, like envy and other such things. He must give them good advice because that the Prophet, may Allah bless him and grant him peace, said in a sound *hadith*, "The *deen* is good counsel," i.e. most of the *deen* is good counsel, as he said, "Hajj is 'Arafa." Those present asked him, "For whom, Messenger of Allah?" He said, "To Allah, His Book, His Messenger, the leaders of the Muslims and their common folk."

Good counsel to Allah that you describe Him with what He describes Himself of necessary attributes and disconnect Him from what is not appropriate for Him. Good counsel for His Book is to recite it properly and obey its commands and avoid its prohibitions. Good advice for His Messenger is to believe in him and all that what he brought. Good counsel for the leaders is to obey their commands and to follow the laws which agree with the ShariÔa in measures and weights and other things. Good counsel for the common is to guide them to their best interests and to treat them with truthfully.

He mentions the extent of love which is to want for your fellow believer what you want for yourselves because it is the greatest pillar and necessary for the maintenance of the pillars, and it is not related that faith has any other pillars. The "brother" is mentioned to exclude the Messenger, blessings be upon him , from that because "A person is not a believer until he loves the Messenger, may Allah bless him and grant him peace, more than his wealth, his children and himself."]

40.26b.Maintaining Ties with Kin

He must maintain ties with his relatives.

[That is every relative by lineage through mother or father.]

[*Hash*: This maintaining of ties includes visiting relatives, spending on those who are in need, good words, asking about how they are, overlooking their faults and helping them. It varies with different relatives. What is meant are believing relatives, not unbelievers, except for dutifulness to parents. Visiting means those who live nearby. Otherwise it is achieved through letters.]

40.26c. Duties Owed to Fellow Muslims

A believer must greet another believer when he meets him, visit him when he is ill, wish him well when he sneezes, attend his funeral when he dies and defend him when he is absent, publically and in secret.

[He should initiate the greeting when he meets him. As for visiting the one who is ill, part of the *adab* of that is that when he asks about his condition, he shows him compassion and does not make him despair. Wishing him well when he sneezes is to say to him, "May Allah have mercy on you" when he hears him praise Allah. He must attend his

funeral: both the prayer and the burial. He should not slander him in his absence nor should he wish him ill.]

[*Hash*: Visiting the ill is a *fard kifaya*. He should also make supplication for the person who is ill and place his hand on his hand or his forehead to see how he is. He should not look at the private areas of the house or things one would normally not wish to be seen.]

40.26d. Impermissible Shunning

One does not shun his brother for more than three days. The greeting ends the shunning, but he should not leave off speaking to him after the greeting.

[Shunning is not speaking to him or greeting him. Three days is based on the words of the Prophet, may Allah bless him and grant him peace, "It is not lawful for a Muslim to shun his brother for more than three days." It is understood from this that shunning for three days is allowed, even if shunning is forbidden in general since that is difficult because of human nature which is rarely free of anger. The greeting, if he intends it, ends the shunning. If the other returns it, they both end the shunning. Otherwise only the greeter ends it. It is recommended that he be easy and continue to speak to him, because leaving it after giving the greeting is a bad opinion of him.]

40.26e. Permitted Shunning

Permissible shunning is to shun someone with an innovation or someone who openly commits major wrong actions provided he cannot punish him and is unable to admonish him or the individual will not accept admonishment.

[This means a forbidden innovation like the Qadariyya who said that good and evil come from man, not from Allah.

[*Hash*: Innovation is divided into forbidden and disliked. Forbidden innovations also include saying that the Night Journey was only a dream and the *Rafidiyya* (extreme Shi'a who reject Abu Bakr and 'Umar).] Someone who openly commits major wrong actions and makes no attempt to conceal them is like someone who drinks wine openly. The place for shunning someone who openly commits wrong action is when he cannot punish him by the Shari'a by discipline and the like, like types of ta'zir. If he cannot admonish him by the difficulty to of mending him or if he will not accept it because of his lack of sense and the like.

40.26f. When Talking About Someone Is Not Backbiting

In these two cases, mentioning the situation of someone is not backbiting nor is it backbiting when someone is consulted about someone's character for the sake of marriage or joint enterprise or the like, nor for the purpose of assessing the character of a witness and the like.

[In these two cases, mentioning their state of iniquity in creed or limb. When he is asked about them, he says about the innovator, "So-and-so's dogma is false since it differs from the people of the Sunna." In respect of the one who openly commits wrong action, he says, "So-and-so persists in major wrong actions." It is permitted to mention what he displays but forbidden to mention his other faults. This is not backbiting.

If someone is asking about someone to marry, as when he says, "I want to marry the daughter of so-and-so but I do not know his state," then he can mention his state to advise him and nothing more. The same is true if the enquirer is planning on entering into a partnership and the like and the person wants to know if he can be trusted. The same holds for assessing the character of a witness, or someone for which act as an imam for the prayers. They ask about him and he can inform them of his shortcoming. Indeed, he must do that. It is the same in dealing with the

character of a transmitter out of fear that he will attribute something to the Prophet which he did not say.]

40.26g. Noble Character

It is noble character to pardon the one who wrongs you and to give to the one who refused you and to join the one who cut you off.

[That is because the Prophet, peace and blessing be upon him, said, "My Lord commanded me to connect those who cut me off, to give to those who deprive me, and to pardon those who wrong me."]

40.26h. Four Hadiths About Good Character

The sum of good adab and its peak can be derived from four hadiths.

[These are the qualities which amount to good character. They are called adab because they are learned. The peak is the acme of good.]

1. The Prophet, peace be upon him, said, "Anyone who believes in Allah and the Last Day should speak well or be silent."

[The whole hadith is: "Anyone who believes in Allah and the Last Day should not harm his neighbour. Anyone who believes in Allah and the Last Day should honour his guest. Anyone who believes in Allah and the Last Day should speak well or be silent." He should speak good and be rewarded for it or be silent from an evil for which he will he punished.]

2. He said, "Part of the excellence of a person's Islam is his leaving alone what does not concern him."

[It is that in which there is no benefit for him either in this world or the Next.]

3. He told the one who asked him for succinct advice, "Do not get angry."

[He repeated it several times. The Prophet meant that not keeping angry is an immense matter because anger has ruinous consequences in this world and the next and not getting angry has benefits and fruits in the Next World which are beyond number because Allah Almighty created anger from the Fire and kneaded it in the clay of ma. When one of his desires is opposed, the fire of anger is kindled in him and it bubbles up and the blood of his heart boils and spreads in the veins and rises to the top of his body like water in a pot and then it diffuses his face and eyes so that they become red since the skin is like glass, conveying what is behind it. The aim of the Lawgiver, may Allah bless him, was that he should not do that which will provoke anger, not to stop something on which he is formed and which cannot be removed from him.]

4. He said, "A believer wants for his brother believer what he wants for himself."

[It is in al-Bukhari as, "None of you will believe until he wants for his brother what he wants for himself," i.e. of obedience and permitted things.]

40.27. Things One Should Not Listen To

It is not lawful for you to deliberately listen to all of a falsehood nor to take pleasure in listening to the words of a woman who is not lawful for you nor to listen to musicians and singers.

[Falsehood is like backbiting or action like listening to musical instruments and their sound.

[*Hash*: According to Ibn 'Umar, listening to it is not *haram*.]

It is not lawful for you enjoy the speech of a woman with whom you cannot have intercourse, and so it would be permitted to enjoy the words of a wife or slavegirl. It is not permitted to enjoy the voice of a beardless youth. It is not lawful to listen to things like lutes and singing.]

40.28. Qur'an Recitation

It is not permitted to recite the Qur'an with quavering melodies as in the quavering used in singing. The Mighty Book of Allah must be respected and recited with calm and gravity in a way which is certain to please Allah and bring one near to Him with attention and understanding of that.

[Nor should one listen to it with musical tunes. It must be respected and recited with stillness. One should not fiddle with his hand not look at what amuses him. A result of respect is that when he is about to break wind or yawns, he refrains from reciting until it is finished and the like. He must seek to please Allah by being in purity and facing *qibla* and sitting as a student before a master or standing in prayer. "Bringing one near to Him" is that one is certain that Allah is near to the reciter and the reciter draws near the Master means that he is accepted. He should pay attention to what he recites. When he recites an ayat of prohibition, he is certain of the prohibition, or one of command, he is certain of what is commanded. This is one of the fruits of understanding.]

40.29. Commanding The Correct

It is an obligation to command the correct and forbid the bad for everyone who has authority in the land and whoever can achieve that. If he cannot do that, then it is with his tongue. If he cannot do that, then it was with his heart.

[The correct is what Allah and His Messenger have commanded and the bad is what Allah and His Messenger have forbidden. If someone has

authority, like a ruler, he should put it right. If he cannot change it with his hand, then with his tongue. Changing it with the heart is that when he sees something bad he says to himself. "If I had the power to change it, I would do so." When he sees something correct being abandoned, he says in himself, "If I had the power to command it, I would do do so." He likes someone who does what is correct and dislikes someone who does what is objectionable.]

40.30. RIGHT INTENTION

It is an obligation for every believer to desire the Noble Face of Allah by every word and deed. If someone desires other than Allah in that, his action is not accepted. Showing off is lesser *shirk*.

{The action must be meant for the sake of Allah, not for reputation or showing off. There are two levels in the intention: the perfect is not to intend the Garden or the Fire. The imperfect is to intend to enter the Garden and be far from the Fire. If the word or action is mean for other than Allah, it is not accepted. Showing off, which is to do an action which may be an act of devotion, wanting people to see it, although that can be in other things which are not acts of devotion, like dressing, that is lesser *shirk* since Ahmad related that Prophet, peace be upon him, said, "The greatest thing I fear for you is lesser *shirk*." They asked, "Messenger of Allah, what is lesser *shirk*?" "Showing off," he replied.

40.31. REPENTANCE (*TAWBA*)

40.31a. Its obligatory nature

Repentance from every wrong action and not persisting in it is an obligation. Persisting in it is to continue in the wrong action and intend to return to it.

[It is regret for what he misses and leaving the wrong action immediately with the intention not to return to it. "Not persisting" is repetition because repentance is not valid when one persists in the wrong action.]

40.31b. Part of what repentance requires

Part of repentance is to restore wrongs and avoid forbidden things and to intend to not revert to the wrong action.

[Restoring wrongs to their people is by giving them to them, if that consists of property, or returning them to the person's heir if the wronged person is no longer alive. If there are no heirs, then he gives it as sadaqa to someone wronged. If it is honour, like slander, rectifies that about the slandered. It is also a precondition to avoid forbidden things and not to return to them.]

40.31c. Asking forgiveness

The one who repents should ask forgiveness of his Lord and hope for His mercy and fear His punishment while remembering His blessings to him. He should thank Him for His favour to him by actions, meaning by obligations, and by not doing what is disliked to do, He should draw near to Allah by doing voluntary acts of good which are feasible for him.

[Asking forgiveness is one of the pillars of repentance. He should act, even if it is a little. This is like the prayer since it is confirmed that the Prophet, may Allah bless him and grant him peace, reported that Allah says, "My slave continues to draw near to Me with supererogatory actions until I love him. When I love him, I become his hearing with which he hears, his sight by which he sees, his hand with which he strikes and his foot with which he walks. If he asks of Me, I give to him. If he seeks refuge with Me, I give him refuge."]

40.312d. Missed obligations

He should make up any obligations which he missed immediately, asking Allah to accept them and turning to Him in repentance for missing them.

[This is like the prayer. They are immediately obligatory. He should hope that Allah will accept them and pardon him.

[*Hash*: This is if it is not too difficult for him and then he makes them up as best he can. He cannot do any supererogatory actions until he has made up the obligatory, with the exception of stressed sunna like the *witr*, *Ôids* and *Fajr*.]

40.31e. Seeking Allah's help

He should seek refuge in Allah when he finds it difficult to direct himself or is confused about what to do. He should be certain that Allah can reform his state, grant him success, and direct him. He should not abandon that because of any good or ugliness in him and he must never despair of the mercy of Allah.

[What he seeks is success in going straight in obedience to Allah. He should not cease seeking refuge and certainty according to his state. The good is obedience and the ugliness is disobedience. Wrong action should not prevent him from that because Allah says, "Allah loves those who repent." *Tawwab* means the one who, whenever he commits a wrong action, repents.]

40.32. REFLECTION

Reflection on the command of Allah is the key of worship. So seek help by remembering death and reflecting on what comes after it, the blessings of your Lord to You, and his deferring you while

punishing others for their wrong actions. Reflect on your past wrong actions and the outcome of your affair and how suddenly and soon your death will come.

[The command of Allah means His creation because when you reflect on the products of the Creator, you know the necessity of His existence, the perfection of His power and the reality of his Lordship, and so must worship Him. Looking at the creation of Allah is, as the Shaykh said, the key to worship.

Seek help against yourself is also in reflecting on death because death is harder than what went before and what comes after it is worse than that. Also seek help against it by reflecting on the blessing of your Lord since when you reflect on His blessings to you, you are too shy to commit wrong actions. Also seek help in reflecting on the end of your business since you do not know what the seal will be. Your term will come soon, i.e. the end may be at the end of the day or sooner because that makes obedience is easy and lessens hopes and desire. When you reflect on death, that is preparation for it, for when comes suddenly regret will be of no use, O Ever-Kind, be kind to us! There is no strength and no power except by You! May Allah bless our master Muhammad and his family and Companions and grant them peace.]

CHAPTER 41: THE NATURAL FORM (*FITRA*): CIRCUMCISION, SHAVING THE HAIR, DRESS, COVERING THE PRIVATE PARTS AND THE LIKE

[The *fitra* refers to the qualities by which a person is complete so that he has the best of qualities in his form and demeanour. The author also deals with what is commanded and forbidden under this topic, like forms and images.]

41.1. THE FITRA (NATURAL FORM)

Five things are part of the fitra: 1) trimming the moustache, which is the curve which is the hair which curls around the lips, not shaving off the moustache completely, and Allah knows best, 2) trimming the nails, 3) plucking out the hair of the armpits, 4) shaving pubic hair, – and there is nothing wrong in shaving the hair off the rest of the body. 5) Circumcision is a sunna for men and honourable for women.

[1. Trimming the moustache, i.e. the hair which grows over the lip, meaning that which comes down over the lip. This is the sunna for shortening it, but it is not removed completely.

2. Trimming the nails for men and women.

3. Plucking out the hair of the armpits which is sunna for men and women.

4. Shaving pubic hair which is sunna for men and women. It is disliked to pluck out the hair for men and women because that weakens the area. It is permitted to use a depilatory. It is permitted to shave the hair on the hands and feet, and the rest of the body other than the head and beard. It

appears it is permissible for men and mandatory for women to remove that whose removal entails beauty, because not doing it is mutilation.

[*Hashiyya*: Shaving is best because that was the sunna of the Prophet, may Allah bless him and grant him peace. 'Abdu'l-Wahhab said that removing other bodily hair is either permissible or sunna for men. Women should remove extra hair for beauty, even the hair of a beard if she grows one. She must let hair remain whose existence is part of beauty and so she is forbidden to shave her head. There is some disagreement about a man shaving his head. Some say that it is permitted for someone who wears a turban and disliked for the one who does not wear a turban.
5. Circumcision is sunna for men, adult or not adult, but the adult should do it to himself so as not to expose his private parts. It is removal of the foreskin. It is a stressed sunna.]

41.2. BEARDS

The Prophet commanded that the beard be left and allowed to become thick without being cut off. Malik said that there is nothing wrong is shortening it if it becomes too long. Many Companions and Tabi'un said that.

[It recommended to remove some of it if it too long. There is no limit to what is taken of it if one leaves it relatively full.]

41.3. DYING HAIR

It is disliked to dye the hair black, but not forbidden. There is nothing wrong is using henna and katam.

[It is a prohibition for the sake of abstemiousness. This is particular ruling in relation to selling and jihad. It is forbidden in selling (i.e. to make a slave appear younger), but there is a reward for doing it in jihad

to confuse the youthful enemy. There is nothing wrong with henna or katam, which makes the hair yellow. Henna makes it red. It is recommended or permissible, more likely the later.]

41.4a. The prohibition of using gold for men

The Prophet, peace and blessing be upon him, forbade men to wear silk and gold or iron rings. There is nothing wrong in using silver to decorate a seal ring, a sword or a copy of the Qur'an, but that should not be used in bridles, saddles, knives or in other such things.

[He means that the ring is made of silver, as it states in the two *Sahih* collections that the Prophet had a silver ring made and wore it on his hand and then Abu Bakr wore it after him. Then 'Umar wore it and then 'Uthman, may Allah be pleased with all of them until it fell into the well of Arish. 'Uthman searched for it and drained the well for three days but did not find it. It indicates that the khalifate was represented by the ring. Engraved on it was "Muhammad is the Messenger of Allah." Silver is not used on weapons of war in general.]

[*Hash*: It is permitted to use silver or gold on swords. It is said that that is because it will alarm the enemy. It is used on copies of the Qur'an to show esteem for it. The permission to use silver on swords is for a man's sword. It is not used on a woman's sword, even if she uses it for jihad.]

41.4b. Women's use

Women can wear gold rings, but he forbade them wearing iron rings.

[It is preferred that they use silver. Iron is forbidden for both men and women.]

41.4c. Manner of wearing rings

What is preferred, according to what is reported about rings, is that they are worn on left hand, since the right hand is used for taking things. A person takes something with the right hand and puts it into the left.

[This is the majority position, including that of Malik. It is related that the Prophet, may Allah bless him and grant him peace, wore his ring on the little finger of the left hand. He turned the face towards his palm. When he did *istinja'*, he removed it and he removed it when he went to the lavatory. Also the left hand is further from pride.

41.4d. Khazz (fabric containing silk)

There is disagreement about wearing khazz. Some permit it and others dislike it. The same is true about silk badges on garments except for a thin strip.

[Khazz is cloth whose warp is of wool, cotton or linen and its woof is silk. The first position is in the *Qamus* while Ibn Rushd takes the second position. There is a third that is unlawful. Al-Qarafi said, "It is the apparent position of Malik by the words of the Prophet, may Allah bless him and grant him peace, on the robe of 'Urtarid which was mixed with silk and he wore it and he said, "This is one who has no portion in the Next World." Badges are less than a finger in length.

41.5 CLOTHING

41.5a. Women's dress

When women go out, they should not wear thin clothing which lets their shape be seen.

[That which lets the attributes of body be seen, like breast and rear end. In their house with they husbands, they can wear such clothes.]

41.5b. Arrogance in dress

A man should not drag his waist-wrapper out of pride nor his garment out of arrogance. His garment should reach the ankles, as that is cleaner for the garment and shows more godfearing.

[In this case, the dragging originates from arrogance. The same would apply to a woman if she did it out of arrogance. It is more godfearing for it to reach the ankles because he guards against pride, and vanity. Pride refers to a person regarding himself as perfect while forgetting the blessing of Allah and the vanity to thinking little of others, Pride is more specific than vanity.]

41.5c. Samma'

It is forbidden to wear a samma' garment over nothing else. It is lifted up by the arm on one side and hangs down on the other. That is when there is nothing under it. There is disagreement about when there is garment under it.

[Like wearing it over a waistwrapper. It is explained in the hadith of Abu Sa'id that a man puts his garment on one of his shoulders so that his side shows. Linguists explain it as a man wearing a garment in which he is wrapped and there is no way out for his hand. When he wants to put his hand out, his nakedness shows. The *Qamus* says that it means he brings the garment from his right side over his left hand and left shoulder, and then brings it back again over his right hand and shoulder and covers them all. Malik has two positions about when it is worn over a garment. One is that it is forbidden, taking the hadith literally, and the other that it is permitted since the legal cause does not exist, which is avoiding exposure of the private parts.]

41.6 COVERING THE PRIVATE PARTS

41.6a. Covering The Private Parts Is Obligatory

One is commanded to cover the private parts. The waist-wrapper of a believer reaches mid-calf.

[To hide the private parts from people's eyes is mandatory by consensus, and recommended in private in the well-known position. There is also a position that it is obligatory in private. The man's waist-wrapper should reach mid-calf since the *Muwatta'* reported that the Prophet, may Allah bless him and grant him peace, said, "The waist-wrapper of a Muslim should reach his mid-calves, and there is no harm - i.e. there is nothing wrong - in what is between that and the ankles. Anything lower than the ankles will in the Fire. Allah will not look at anyone who drags his wrapper out of pride."]

41.6b. The Thigh

The thigh is a private part, but not an intrinsic private part.

[What is between the thigh and the hip is a private part. This means it is not an actual private part, and the strictest position that it is disliked to show it with other than close friends and relations is unlikely because the Prophet, had his thigh uncovered with Abu Bakr and 'Umar. In Muslim, 'A'isha reported that the Messenger of Allah, may Allah bless him and grant him peace, was reclining in his house with thighs and calves uncovered. Abu Bakr asked for permission to enter and he gave him permission while he was like that. He spoke and then 'Umar asked for permission and he gave him permission while he was like that and he talked with him. Then 'Uthman asked for permission and the Messenger of Allah, may Allah bless him and grant him peace, sat up and straightened his garment. He entered and spoke with him and then left. 'A'isha said, "Abu Bakr entered and you were not concerned. 'Umar

entered and you were not concerned, (meaning you did not worry and cover your thighs). Then 'Uthman entered and you sat up and straightened your garment." He said, "Should I not be modest before a man before whom the angels are modest?" Modesty is a virtue.]

41.6c. Bathhouses

A man should not enter the bathhouse without wearing a waist wrapper. A woman should only enter it for a reason. Two men or two women should not be together under a single cover.

[Hash: The ruling for men is when there are other people present. If the bathhouse is empty, then it is permitted without one.]
A reason for a woman to enter is like illness or lochia, not for menstruation or janaba.

[Hash: Abu Dawud reported that the Prophet, may Allah bless him and grant him peace, said, "The lands of the non-Arabs will be opened to you via conquest and you will find houses in them called bathhouses. Men should only enter them with a waist wrapper and forbid women to enter them unless they are ill or bleeding after childbirth." Ibn Rushd says it is disliked for them and is less than an actual prohibition.]
The rule about the single cover or cloth is when their private parts are not covered. This is a prohibition, whether they are relatives or not based on what Abu Dawud related that the Prophet, may Allah bless him and grant him peace, said, "A man should not look at another man's private parts nor a woman at another woman's private parts. Two men should not lie naked under the same cover nor two women under the same cover."]

41.7. Women Going Out And Music

41.7a. Women Going Out

A woman should not go out unless she is covered for what she must do in being present at the death of her parents or relatives or the like which is permitted.

[Like funerals and weddings.]

41.7b. Unacceptable Gatherings

Furthermore she should not attend a funeral where there are woman wailers or gatherings with playing of flutes or lutes or similar instruments, except for the tambourine in weddings. There is disagreement about kabar drums.

[It is not permitted to attend such gatherings. The kabar is a small drum with a skin on one side. Ibn al-Qasim permitted it and others forbid it.]

41.8. Seeing Women

A man should not be alone with a woman for whom he is not a *mahram*. There is no harm in him seeing a woman for some reason like identifying her or the like of that, or when he proposes marriage to her. As a woman who does not provoke desire because of her age, there is nothing wrong in him seeing her face in any case.

[He means a young woman who is not related to him since the Prophet, peace be upon him, forbade that, saying that Shaytan is the third of them. He can see her for a legitimate reason. The "like" includes a doctor looking at her.]

41.9 Hair Extensions and Tattoos

Women are forbidden to add someone else's hair to their own or to tattoo themselves.

[Since the Prophet, may Allah bless him and grant him peace,said, "Allah has cursed anyone who joins hair together and the person to whose hair it is joined, women who tattoo and are tattooed, women who pluck their eyebrows, and women who file their teeth to make gaps for beauty, altering Allah's creation!" Plucking is to remove the hair of the eyebrows until they become thin for cosmetic reasons, and making gaps is to file the teeth so they are far apart. It is understood that the prohibition is when it is done for beauty. When it is done for treatment or a defect, there is no harm in it.]

41.10 Putting On Footwear

When putting on a sock or sandal, begin with the right and when removing it, begin with the left. There is nothing wrong in putting on sandals while standing. It is disliked to walk in only one sandal.

[This is a recommendation. One can put them on sitting down or standing, either being preferred. It is disliked to walk in only one sandal because the Prophet, may Allah bless him and grant him peace, forbade that.

41.11. Images

It is disliked to make images on beds, tents, walls and rings. Designs on clothing is not part of that but it is better not to do it.

[These are images of animals. Tents includes a cloth put over a howdah.]

CHAPTER 42: EATING AND DRINKING

This chapter is about the *adab* of eating and drinking.

42.1. INVOCATION BEFORE AND AFTERWARDS

When you eat or drink, it is mandatory for you to say, "In the name of Allah" - "*Bismillah*" and to take the food using your right hand. When you finish, you should say, "Praise be to Allah" - "*Al-hamdu lillah*."

[This is the *sunna*, to say "In the Name of Allah," aloud and not add "the All-Merciful, Most Merciful". It is recommended to use the right hand for eating and drinking. After eating, one says, "*Al-hamdu lillah*" silently.

[*Hashiyya*: If one forgets to say "In the Name of Allah" when he begins, then when he finishes, he says, "In the Name of Allah, the first of it and the last of it." It is recommended to say it aloud to remind others who might forget it and to instruct someone who does not know that. One does not add "the All-Merciful, Most Merciful" because chewing is punishment, and punishment is not combined with mercy, just as one does not add that when slaughtering an animal. Some, however, like Abu Mahdi, the shaykh of Ibn Naji, prefer to add that.
One is recommended to say "*al-hamdu lillah*" silently so as not to embarrass someone who is eating and is not full.]

42.2. EATING MANNERS

42.2a. Licking The Hand

It is good to lick your hand before wiping it.

[One version says "fingers" since it says in Muslim that the Prophet used to lick his hand before wiping it. One eats with three fingers.

[Hash: Qadi 'Iyad said, "(Eating with fingers is) part of the *adab* and *sunna* of eating. Eating with more than them is greed and bad manners unless more are needed because of the fineness of the food.]

42.2b. Thirds

The manners of eating include leaving a third of your stomach for food, a third for drink and a third for breath.

[So when someone eats a lot of food, he has no space for breathing.]

42.2c. Eating From in Front of One

If you are eating with others, you eat from what is in front of you.

[When you are eating with other than your famly, you eat from what is in front of you because the Prophet, may Allah bless him and grant him peace, commanded that.]

42.2d. Finishing One Bite before Taking Another

Do not take another bite until you have finished the previous one.

[Until you have swallowed it so that you are not greedy for food and so that you do not choke and become embarrassed. Part of the proper *adab* is that you eat small morsels and take your time while eating, even if that is not your habit.]

42.2e. Drinking

Do not breath into the vessel while you are drinking. Take the cup away from your mouth and then return it if you wish, Do not drink in gulps, but sip it.

[The Prophet, may Allah bless him and grant him peace, forbade breathing into the vessel. It is permitted to drink in one gulp. That is the position of Malik. It is said, however, that it is disliked, because the Prophet, peace and blessings be upon him, said, "When one of you drinks, he should take three breaths. It is more healthy and satisfying.

42.2f. Chewing Properly

Chew your food properly before swallowing it.

[That is better for enjoyment and for digestion.]

42.2g. Cleaning the mouth after eating

Clean your mouth after eating. It is good to wash your hands of grease and milk. It is good to pick out any food between your teeth.

[Clean your mouth after eating by rinsing and using the *siwak* to prevent bad breath. It is good to wash your hands after licking it to remove grease and fat and milk. That is recommended. One removes food from between the teeth because the Prophet, may Allah bless him and grant him peace, commanded that.]

42.2h. Not Eating with the Left Hand

The Messenger, peace be upon him, forbade eating or drinking with the left hand.

[That is because Shaytan eats and drinks with his left hand.]

42.2i. Passing to the Right

When you drink, you pass it to the one on your right.

[That is based on the report is the *Muwatta'* that the Messenger of Allah, may Allah bless him and grant him peace,was given some milk mixed with water. There was a bedouin to his right and Abu Bakr as-Siddiq to his left. He drank and then gave it to the bedouin, saying, "The right and then to the right."]

42.2j. Not Blowing on Food or Drink

It is forbidden to blow on food or drink or on a book, or to drink from a gold or silver vessel.

[What is meant by book is a book of *fiqh* or *hadith*. In the case of food or drink, it is to protect it from dirt, and it is for respect in the case of books.

The Prophet, peace and blessings be upon him, in the two *Sahih* collections, said, "Do not drink or eat from a gold or silver vessel nor their plates They have them in this world and you have it in the Next World," meaning the unbelievers.}

42.2k. One Can Drink Standing

There is nothing wrong in drinking standing up.

[As it is related in at-Tirmidhi that the Prophet, may Allah bless him and grant him peace, used to drink both standing up and sitting down, and 'Umar and 'Uthman that. That is the position of the fuqaha'.]

42.2l. Not Entering a Mosque after Eating Garlic

It is not permitted for someone who has eaten raw leeks, garlic or onions to enter a mosque.

[It is disliked because Ibn al-Qasim heard from Malik that more than one preferred that that is prohibited. Ibn 'Umar took the works of the author to mean that.]

42.2m. Not Eating Reclining

It is disliked to eat reclining.

[It is to lean on one's left side on the left leg and rest on the left elbow with the right thigh upright.]

42.2n. Not Eating from the Top

It is disliked to start eating from the top of tharid (bread soaked in broth).

[Since it is confirmed that the Prophet, may Allah bless him and grant him peace, was brought a bowl of tharid and said, "Eat from its sides and do not eat from its middle. The blessing descends on the middle."]

42.2o. Eating Two Dates at the Same Time

It is forbidden to eat to two dates at the same time, but it is said that this prohibition only applies to co-owners of the dates they are eating. There is nothing wrong in doing that with your own family or people you are feeding.

[The prohibition is one of dislike either because of being bad manners or because of self appropriation. If the people are partners in the dates, then it is a forbidden. He is permitted to do that in his own family because it is his, or with those he is feeding if the reason is appropriation. If it is bad manners, the prohibition remains.]

42.2p. When There Are Different Fruits on the Plate

When eating dates and other fruits, there is nothing wrong in reaching your hand around the dish to eat what you want of them.

[When, for instance, there are dates and raisins. Then you can reach to take them wherever they are on the plate. That is reported in the Sunna.]

42.3. WASHING THE HANDS

42.3a. Washing the Hands Before Eating

Washing one's hands before eating is not sunna unless they are dirty.

[Indeed, it is disliked if they are clean according to the well-known position of Malik. One does not act by his words, peace be upon him, "Washing before eating removes poverty and after it removes pains." It is not the action of the people of Madina, i.e. their action is put before the hadith, even if the hadith is sound. That is because the fact that their action was contrary to the hadith must oblige that the Prophet, may Allah bless him and grant him peace, acted differently which indicates that it was abrogated. If, however, they are dirty, they are washed to honour the food.]

42.3b. After Eating

After eating, a person should wash his hands and mouth free of grease and rinse the milk from his mouth.

[Yusuf ibn ÔUmar said that this is a ruling particular to milk because it has fat and that is strengthened by the hadith in which the Prophet, may Allah bless him and grant him peace, drank milk and then called for water and washed his mouth. He said, "It has fat."]

42.3b. Not Using Foodstuff for Cleaning the Hands

It is disapproved to clean one's hands with food or any bean flour or even the chaff of grain, but there is disagreement about the latter.

[The disagreement is about whether it is permitted or disliked.]

42.4 Going to a Wedding Feast

If you are invited to a wedding feast, you must go unless there is well-known or objectionable entertainment there. It is up to you whether you eat. Malik stated that it is allowed not to go if it is too crowded.

[It is said that this is a recommendation and it is said that it is an obligation. It is obliged to accept the invitation when one is specifically invited. He adds more preconditions: that there are not forbidden musical instruments there and disliked things like men and women mixing and silk couches.]

CHAPTER 43: RULINGS CONCERNING SPEECH:

Greetings, Asking Permission to Enter, Conversation, Recitation, Supplication, Dhikru'llah, and Travel

43.1 GREETING

43.1a. The Form of the Greeting

Returning a greeting is mandatory. Initiating it is sunna and desirable. The form of the greeting is that a man says, "Peace be upon you," (*as-salamu 'alaykum*) and the reply is, "And upon you peace," (*wa 'alaykumu's-salam*) or "Peace be upon you," (*salamun 'alaykum*) as was said to him.

A fuller greeting which ends with blessing is that you say in reply, "On upon you peace and the mercy of Allah and its blessings." (*wa 'alaykumu's-salamu wa rahmatu'llahi wa barakatuh*) Do not say in you answer, 'The peace of Allah be upon you." (*salamu'llah 'alayk*)

[Returning the greeting is a *fard kifaya* in the well-known position. Initiating it is a *sunna kifaya* and is stressed. The plural form is used whether it is one or more people greeted, thereby including the guardian angels. Ibn Rushd said that the best is to greet with *as-salamu 'alaykum* and to reply with *wa 'alaykumu's-salam*.

The optimum reply is *wa 'alaykumu's-salamu wa rahmatu'llahi wa barakatuh*, and it is innovation and excess to add more than that.

The last form (*salamu'llah 'alayk*) is not used because it is not reported that Prophet, may Allah bless him and grant him peace, used it and it is not transmitted from the Salaf.]

43.1b. One of a Group is Enough

If one of a group makes the greeting, that suffices for all of them. The same applies when one of them returns the greeting.

[Because it is part of the *sunna al-kifaya*.]

43.1c. Who Greets Whom

Someone riding greets someone walking, and someone walking greets someone sitting.

[This is based on the command of the Prophet, may Allah bless him and grant him peace.]

43.1d. Shaking Hands

Shaking hands is good. Malik disliked embracing, but Ibn 'Uyayna allowed it.

[It is recommended according to the well-known position. There is a counter transmission of Malik from Ashhab that it is disliked.

[*Hash*: Shaking hands is recommended based on what the Prophet, may Allah bless him and grant him peace, is reported as saying in the *Muwatta'*: "Shake hands and rancour will disappear. Give presents to each other and you will love each other and enmity will disappear."] Sufyan ibn ÔUyayna was one of the great people of knowledge and excellence.]

43.1e. Embracing and Kissing the Hand

Malik disliked kissing another's hand and did not accept what is related about it.

[This is kissing the hand of another person, whether it is a scholar, master or father. It is the apparent meaning of the text of the people of the School because it is the action of the non-Arabs which can lead to pride and self-importance. Malik did not accept the *hadiths* related about it. One is that when the delegation of 'Abdu'l-Qays came to the Prophet, they went to his hands and feet. It is *sahih*. Another is Sa'd ibn Malik kissing the hand of the Prophet, may Allah bless him and grant him peace.

[*Hash*: If Malik's criticism of the hadiths was based on transmission, he was the Imam in *hadith*. If it is *fiqh*, it is based on *ijtihad*. Ibn Battal, a Maliki imam, says that it is disliked to kiss the hands of tyrants, but it is permitted to kiss the hand of a parent or righteous man whose *baraka* is hoped for.]

43.1f. Greeting People of the Book

You should not initiate the greeting to a Jew or Christian. If a Muslim inadvertently greets a *dhimmi*, he does take it back. If a Jew or Christian greets a Muslim, he should answer, "On you ('*alayk*)." It is also said that one may answer with "And on you *silam*." "*Silam*" means a stone. That used to be said.

[It is confirmed that the Prophet. may Allah bless him and grant him peace, forbade initiating it. This prohibition is one of dislike. If someone greets one of them, thinking he is a Muslim, he does not seek the reply by saying something like, "I greeted you thinking that you were a Muslim. If I had known that you were an unbeliever, I would not have greeted you. Return to me the greeting I gave you." When he replies to their greeting, he says, "On you" without the waw so that it is against him.]

43.2 ASKING PERMISSION TO ENTER AND VISITING THE SICK

43.2a. Asking Permission to Enter

Asking permission to enter people's houses is mandatory. Do not enter a house where someone is present without asking his permission three times. If you are given permission, enter. Otherwise, go away,

[It is a mandatory obligation because the Almighty says, "When your children reach puberty, they should ask permission to enter." Whoever abandons that disobeys Allah and His Messenger. It makes no difference whether the house is locked or unlocked, Asking three times is the limit, whether a *mahram* or someone whose private parts it is not lawful to look at him, as opposed to a wife or slavegirl.

[*Hash*: This does not include public places like mosques, bathhouses, hotels, and the much-frequented houses of scholars, qadis and doctors (not their private dwellings, but areas which are more public.]
The form of asking permission is to say, "May I enter?"]

43.2b. Visiting the Sick

It is recommended to visit the sick.

[This was already mentioned earlier and is out of place.]

43.3. Whispering to the Exclusion of a Person

43.3a. Not Whispering to the Exclusion of Another Person

Two people should not converse together to the exclusion of a third. Nor may a larger group do that while excluding one of them. It is also said that that they must not do that except with his permission.

[This is whether it is done while resident or on a journey.]

43.3b. Not Shunning

Shunning people was already mentioned in an earlier chapter (Chapter 40).

43.4 Dhikr

Mu'adh ibn Jabal said, "No action of a human being is more likely to save him from the punishment of Allah than *dhikru'llah*." 'Umar (ibn al-Khattab) said, "Better than the remembrance of Allah on the tongue is the remembrance of Allah by obeying His commands and prohibitions."

[Regarding Mu'adh ibn Jabal, the Prophet, may Allah bless him and grant him peace, said, "The one with the mot knowledge of the *halal* and *haram* is Mu'adh ibn Jabal." Mu'adh's statement can refer to dhikr by the tongue or by the heart. The perfect dhikr is that which is with the heart and tongue both. 'Umar's statement does not contradict the fact that the most perfect dhikr, is all of them.

Dhikr of the heart has two types. The most majestic is reflection on the immensity of Allah and His majesty, might and His signs in the Heaven and the earth. Then there is remembering with the heart in the command

and prohibition and obeying what He commanded and avoiding what He forbade.]

43.5 SUPPLICATIONS

43.5a. A Supplication for the Morning and Evening

One of the supplications of the Messenger of Allah, may Allah bless him and grant him peace, morning and night was, "O Allah, by You we start the day and by You we end it, and by You we live and by You we die."

He also used to add in the morning, "To You is the gathering," and in the evening, "To You is the return."

[This is transmitted in the four Sunan collections: at-Tirmidhi, Abu Dawud, an-Nasa'i and Ibn Majah.]

43.5b. Another Supplication

Also related in that is: "O Allah, grant me a portion in every blessing with Your slaves who have the greatest portion with You which You distribute on this day and in afterwards: in the light by which You guide, the mercy which You spread, the provision which you expand, harm which you remove, wrong actions which You forgive, hardship which you drive away, temptation which You avert and pardon which You bestow by Your mercy. You have power over all things."

[It is related that it is a *marfu' hadith*. Al-Aqfahasi stated that. It is related that it was part of what Ibn 'Umar said. The author's style seems to indicate the later.]

43.6. A Supplication before Going to Sleep

Part of his supplication when he went to sleep was that he put his right hand under his right cheek and his left hand on his left thigh and then said, 'O Allah, in Your Name I have lain down and in Your Name I will rise. O Allah, if You keep my self, then forgive it. If You release it, then guard it as You guard the righteous among Your slaves. O Allah, I have surrendered myself to You and I commend myself to You. I entrust my affair with You and have turned my face to You fearing You and desiring You. There is no where to flee or refuge from You except to You. I ask for your forgiveness and I turn to You. I have believed in Your Book which You sent down and in your Prophet whom You sent, so forgive me what I did in the past and will do in the future, what I conceal and what I make public. You are my Lord. There is no god but You. My Lord, protect me from Your punishment on the Day You resurrect Your slaves."

43.7. A Supplication When Going Out

It is related that when he left the house, he said, "O Allah, I seek refuge with You from misguiding or being misguided, from slipping up or making others slip, or wronging or being wronged, from being ignorant or being treated ignorantly."

[This is in the four Sunan Collections.]

43.8. A Supplication After The Prayer

It is related that he said after every prayer one should say, "*Subhanallah*" 33 times, "*Allahu akbar*" 33 times and "*al-hamdu lillah*" 33 times and end the hundred with "There is no god but Allah alone with no partner. His is the kingdom and praise is His and He has power over all things."

[This is after every obligatory prayer.]

43.9 A SUPPLICATION AFTER GOING TO THE LAVATORY

After going to the lavatory, you say, "Praise be to Allah who provided me with its pleasure and removed from me its discomfort and let its nutrition remain in my body."

[This is related from the Prophet, may Allah bless him and grant him peace. This hadith is *mursal*. The version in the *Sahih* Collections, "Praise be to Allah who removed harm from me and protected me from affliction." In the *Sahih* collections, when the Prophet, may Allah bless him and grant him peace, entered the lavatory, he said, "O Allah, I seek refuge with you from foulness and the foul ones (shaytans)."]

43.10 SUPPLICATIONS AGAINST DANGER

43.10a. Supplication against danger

You should seek protection from everything you fear and when you camp in a place or sit in a place or sleep somewhere, saying, "I seek refuge with the complete words of Allah from the evil of what He created."

[According to Muslim, you repeat this three times. "The complete words of Allah" means the Qur'an.]

43.10B. ANOTHER SUPPLICATION

Or you may say, "I seek refuge with the noble face of Allah and with the complete words of Allah which neither a pious or impious person can overlook, and with all the Most Beautiful Names of Allah, what I know of them and what I do not know, from the evil of what He created, originated, and produced, and from the evil of what

descends from the sky and from the evil of what ascends in it, and from the evil of the trials of the night and day, and from the evil of from the evil of every visitant at night except that which knocks with good, O All-Merciful."

One may add, "And from every beast whose forelock my Lord has taken, My Lord is on a Straight Path."

[There are more than 99 Names. Al-Qushayri said, "Allah has a thousand names: 300 in the Torah 300 in the Zabur and 300 in the Gospel and 99 in the Qur'an and one in the Pages of Ibrahim.]

43.11. Supplication on Entering a House

When someone enters his house, it is recommended that he say, "As Allah wills. There is no strength except by Allah."

[He also says this when he enters his garden or his shop after giving the greeting if someone is there. If there is no one there, he says, "Peace be upon us and upon the righteous slaves of Allah." That is because Allah says, "*Why, when you entered your garden, did you not say, As Allah wills, there is no strength but in Allah'?*" (18:38)]

43.12. Disliked Activities in Mosques

43.12a. Not Doing Work

In mosques it is disliked to do work like sewing and the like.

[This is a prohibition or dislike.]

43.12b. Other Disliked Activities

One should not wash his hands in a mosque nor eat in it unless it is something light, like *sawiq* and the like. He should not trim his

moustache or nails there. If he does do so, he collects the clippings in his garment. He should not kill lice or fleas there.

[He should not eat things which might soil the mosque. *Sawiq* is roasted wheat or barley mixed with ghee or honey. Nail clippings and the like are considered dirt. Even if he puts it in his garment, it might fall out. The prohibition against killing lice is stronger than that about fleas because lice can release blood which is not the case with fleas.]

43.12c. An Allowance to Sleep in the Mosque

There is an allowance for strangers to spend the night in mosques in the countryside.

[This is out of necessity. It is understood that that is not an allowance in the mosques in towns since there are hotels there for which he can pay. If it is a case of necessity, then he can spend the night there.]

43.13 Reciting the Qur'an

43.13a. In Bath Houses

In bathhouses one should not recite more than a few verses and not alot.

[That is because it is a place of uncleanness.]

43.13b. When One Can Recite

One can recite Qur'an riding, lying down, or walking from one town to another, but that is disliked to recite it while walking to the market, although it is said that a learner can do that.

[One can recite in all these positions because Allah commanded remembrance in all states. He says, "*Remember Allah standing, sitting*

and on your sides." (4:101) "Walking to the market" means the market in towns, not in the one in the countryside which is not disliked.]

43.13c. The length of time one takes to recite the entire Qur'an

It is good for someone to recite the entire Qur'an in seven nights, but to recite less with understanding is better. It is related that the Prophet, may Allah bless him and grant him peace, did not recite it in less than three nights.

[It is good because that was the practice of most of the Salaf. It is better to reflect on the meanings because Allah says, "*Will they not ponder the Qur'an?*" (4:82)]

43.14. A Supplication for Beginning a Journey

It is recommended for a traveller to say when he mounts, "In the Name of Allah. O Allah, You are the Companion in the journey and the substitute in the family. O Allah, I seek refuge with you from the hardship of the journey and from the trouble of reversal and finding family and possessions in a poor state."

[*Hash*: This is related in sound hadith. He says this when he puts his foot in the stirrup.]

43.15. A Supplication After Mounting an Animal

When the traveller is upright on his mount, he should say, "*Glory be to Him who subjected this to us. We could never have done it by ourselves. Indeed we are returning to our Lord!*" (43:12-13)

43.16 TRADING ABROAD

It is disliked to trade in the land of the enemy or the land of the blacks. The Prophet, peace be upon him, said, "Travel is a portion of punishment."

[That is because he exposes his permission and property to attack and abasement to their deen. The land of the blacks refers to the land of those who are unbelievers. The full hadith in the *Muwatta'* is: "Travelling is a portion of punishment. It denies you your sleep, food and drink. When you have accomplished your purpose, you should hurry back to your family."]

43.17 WOMEN TRAVELLING

A woman should not make a journey of a day and a night or more except with a relative except in the case of the obligatory hajj according to the position of Malik. Then she may travel in a safe group, even if she has no relative with them.

[She can travel without a mahram provides that it is a safe group of Muslims.]

CHAPTER 44: MEDICAL TREATMENT, CHARMS, OMENS, STARS, CASTRATION, BRANDING, DOGS, AND COMPASSION TO SLAVES

44.1 CHARMS AND MEDICAL TREATMENT

44.1a. Making Charms

There is nothing wrong in using charms (*ruqa*) against the evil eye and other things, nor in using prayers for refuge.

[Charms (written or spoken) can be used against bites of scorpions and snakes. The evil eye is a poison which Allah puts in the eye of the looker when he admires something and does not ask for blessing. If he asks for blessing when he sees him, nothing befalls the person he looks at since the Prophet, may Allah bless him and grant him peace, said to the one with the evil eye, "Did you not ask for blessing?" There is no disagreement that it is permitted to make charms using the Names of Allah and His Book.

There is nothing wrong with using the refuge prayer. Muslim reports that when the Messenger of Allah, may Allah bless him and grant him peace, had a complaint, he recited the refuge verses over himself: *al-Ikhlas, al-Falaq* and *an-Nas* and spit without actually spitting on his hand and wiped the part of his body which was afflicted.]

44.1b. Medical Treatment

There is nothing wrong in using medical treatment, drinking medicine, being bled and cauterisation. Cupping is good.

[Using medicines for illness is acceptable. Cupping is recommended at all times.]

44.1c. Kohl

It is permitted for men to use kohl for treatment and it is a cosmetic for women.

[Kohl is antimony. Men only use it for necessity.]

[*Hashiyya*: This is one of two positions from Imam Malik. The other position is that it is permitted at night.]

44.1d. What One is not Permitted to use in Treatment

Wine, impurities, that which comes from carrion or anything which Allah Almighty has forbidden are not used for medical treatment.

[It is not permitted to use wine inside or on the outside the body. Nothing of carrion is used since it is unclean. It is not permitted to treat the itch by wearing silk, although there is some disagreement about that.]

44.1e. Cauterisation and Charms (*ruqa*)

There is nothing wrong in cauterisation and using charms with the Book of Allah or using good words.

[Good words means words in Arabic. It is related by al-Bukhari and Muslim that the Prophet, may Allah bless him and grant him peace, uttered a refuge prayer for one of his family. He stroked the person with his right hand said, "O Allah, Lord of people, remove the harm. Heal. You are the Healer. There is no healing but Your healing, a healing which does leave any illness behind."

One does not use charms consisting of unclear words since Malik was asked about foreign words and said, "What will inform you? Perhaps

they are disbelief." The ruling in that is that it is not permitted to use for a charm that whose meaning is not known.]

44.1f. Amulets

There is no harm in amulets which contain something of the Qur'an.

[These are used for protection, whether for someone ill or healthy after it is put inside something.]

44.1g. Plague

If the plague breaks out in a land no one should enter it and those there should not flee from it.

[One does not flee from the plague because the Prophet, may Allah bless him and grant him peace, forbade that. It is disliked.]

44.2. PORTENTS

The Messenger, peace be upon him, said about evil omens, "If they exist, they are in houses, women, and horses." The Prophet, peace be upon him, disliked bad names and liked good omens.

[Bad omens in a house is in the form of bad neighbours. In a woman it is like her lack of lineage or bad character, and in a horse, it is the fact that it has not been ridden in expeditions. The Prophet disliked names like Hanzala (colocynth) and Harb (war).

He liked good omens, In the *Sahih* it is reported that the Prophet was asked, "Messenger of Allah, what is the good omen?" He said, "A good word which one of you hears when he leaves on a journey or to visit a sick person and did not intend to hear." He hears something like, "O Ghanim (successful)! O Salim (safe)." If he intends to hear the omen so as to act on it, that is not permitted. That is akin to arrow drawing. They

had three arrows. One said "Do it", the second "Do not do it" and the third was blank. When the person drew the one that said, "Do it", he would do what he was going to do. If "Do not do it" came out, he went back. If he drew the blank, he repeated the process.]

44.3 Curing the Effect of the Evil Eye

The manner of washing on account of the evil eye is that the person responsible for the evil eye washes his face, hands, elbows, knees, ends of his feet and under his waist-wrapper over a basin. Then that water is poured over the one afflicted.

[He must do this, And he is forced to do it if he refuses when death is feared for the one afflicted and that is the only means of saving him. By under the waist-wrapper he means the area near the private parts.]

44.4. Stars

One should only look at the stars to find the direction of qibla and the time of the night and not other things.

[A third purpose is permitted, and it is to use them for direction when travelling since Allah Almighty says, "*It is He who has appointed the stars for you so you might be guided by them in the darkness of the land and sea*." (6:98) Other things means things like astrology.]

44.5. Dogs

Dogs should not be kept in houses in the towns nor in houses in the countryside except for those used for guarding crops or livestock where the dog accompanies the flock into the desert and then comes home with them, or dogs used for hunting for livelihood, but not for sport.

[They are said to be permitted for guarding houses. If the dog is vicious, then it is forbidden to keep it unless it is a guard dog or a sheep dog. The general prohibition is one of dislike.]

44.6. Gelding Animals

There is nothing wrong in castrating sheep and goats if it improves their meat. It is forbidden to geld horses.

[It is forbidden to geld horses because that weakens them and removes the possibility of using them for stud. It is permitted to geld mules and donkeys. There is consensus that it is unlawful to castrate a human being.]

44.7. Branding Animals

It is disliked to brand on the face. There is nothing wrong in branding them elsewhere.

[It can be done elsewhere on the animal other than the face because the Prophet, may Allah bless him and grant him peace, forbade branding on the face and allowed marking the ear because the owner needs to distinguish his animals.]

44.8. Kindness to Slaves

One should be kind to slaves and not oblige them to do work they are incapable of doing.

[One should be kind to them in eating, drinking and work. The master is not permitted to oblige his slave to do what is hard for him or what he or she cannot physically do.]

CHAPTER 45: DREAMS, YAWNING, SNEEZING, PLAYING BACKGAMMON AND OTHER GAMES, RACING HORSES, SHOOTING AND THE LIKE

45.1. DREAMS

45.1a. The Good Dream

The Messenger of Allah, may Allah bless him and grant him peace, said, "A good dream of a righteous man is a forty-sixth portion of prophethood.

[It is the same for a righteous woman. This means someone who obeys Allah's commands and avoids his prohibitions. It is considered to be part of prophethood because it gives information about what is unseen in a certain way. As for the details connected to that, that is particular to the one who is a Prophet.]

45.1b. The Bad Dream

If someone has a dream he dislikes, when he wakes up, he should spit three times to his left and say, "O Allah, I seek refuge in You from the evil of what I have seen in my dream lest it harm me in my *deen* or worldly affairs."

[One version has, "He should seek refuge with Allah from the Accursed Shaytan three times and then turn onto his other side." The wisdom of changing sides is to move to what is more favourable as it is hoped that Allah will change the disliked to the good.]

45.2. YAWNING

If someone yawns, he should put his hand over his mouth.

[The right hand, either side, or the back of the left hand. When the yawn is over, he spits without spit, even if he is in the prayer.]

45.3. Sneezing

If someone sneezes, he should say, "Praise be to Allah," (*al-hamdu lillah*) and the one who hears him praise Allah should say, "May Allah have mercy on you" (*Yarhamuka'llah*). The sneezer then replies, "May Allah forgive us and you" (*Yaghfiru'llahu lana wa lakum*) or "May Allah guide you and make you thrive" (*Yahdikumu'llah wa yuslih*).

[When he sneezes, he can also say, "Praise be to Allah, the Lord of the Worlds."]

Ibn Naji transmitted from al-Bayan that the best known position is that the reply is an individual obligation which is indicated by the hadith of al-Bukhari, "It is a duty for every Muslim when he hears it to say, "May Allah have mercy on you." In the reply of the sneezer, the second reply is better because guidance is better than forgiveness and forgiveness is only on account of a wrong action.

45.4. Games and Betting

45.4a. Backgammon and chess

Playing backgammon and chess is not permitted. There is nothing wrong in greeting someone who is playing them. It is disliked to sit with someone playing them and to watch them.

[Whether for winnings or not since it is confirmed that the Prophet, may Allah bless him and grant him peace, said, "The one who plays backgammon has disobeyed Allah and His Messenger." Ibn 'Amr said,

"Backgammon are pieces of ivory or coloured wood which are played with in which there is no skill, but based on chance. It resembles playing with dice."

It is not disliked to greet him while he is not playing. As for while he is playing, it is not permitted because they are involved in disobedience. Malik says that his status as a witness is only revoked if that is habitual. The habitual may violate oaths. If it is rare, then he should abandon it and his status is not cancelled.]

45.4b. Contests

There is nothing wrong in racing horses and camels and in holding archery competitions.

[For a prize or without a prize. Competition outside these three is not permitted unless it is not for a prize.]

45.4c. Rules of Prizes

If two contestants stake a prize, they should put another contestant between them. If the third party wins, he takes the stake. If one of the other two wins, the third party gets nothing of it. This is the opinion of Ibn al-Musayyab.

45.4d. Another view on prizes

Malik said that it is allowed for a man to set a stake. If someone beats him, then that winner takes the prize. If the one who set the stake wins, it goes to the one who came after him. If there is only the one who put the stake and one another and the one who put the stake wins, then the stake goes to the spectators.

45.5. KILLING SNAKES AND OTHER CREATURES

45.5a. Snakes

It is reported that when the snakes of Madina appear they are asked to leave for three days. Doing that in other places is good, but this is not done in the desert and they are killed when they appear.

[This is reported from the Prophet, may Allah bless him and grant him peace. The evidence for asking permission is in the *Muwatta'* that the Messenger of Allah, may Allah bless him and grant him peace, said, "There are jinn in Madina who have become Muslim. When you see one of them, call out to it for three days. If it appears after that, then kill it, for it is a shaytan."

The form of asking them to leave to say, "If you believe in Allah and the Last Day and you are Muslim, do not appear to us today. If you appear to us, we will kill you." There is no announcement made in the deserts or roads.]

45.5b. Lice and Fleas

Killing lice and fleas by fire is disliked.

[This includes other such creatures like bedbugs and gnats. If, however, they are causing harm by their numbers, then it is permitted.]

45.5c. Ants

There is nothing wrong, Allah willing, in killing ants when they cause harm and cannot be removed, but it is better not to kill them.

[If it is possible to remove them, that is better.]

45.5d. Geckos

Geckos are killed.

[*Hash*: They are killed wherever they are found because the Prophet, may Allah bless him and grant him peace, commanded killing them.

45.5e. Frogs

It is disliked to kill frogs.

[As long as they are not harmful.

[*Hash*: The Prophet, may Allah bless him and grant him peace, forbade killing them." It is said that their croaking is glorification

45.6. Not Boasting About Ancestors

45.6a. The Boasting of the Jahiliyya

The Prophet, peace and blessing be upon him, said, "Allah has removed from you the stupidity of the Jahiliyya and their boasting of their ancestors. Whether you are godfearing believers or wretched deviant, you are the sons of Adam, and Adam came from dust."

[Stupidity is arrogance and tyranny. If you obey the commands of Allah and avoid His prohibitions, you are elevated with Allah by *taqwa*, even if you have no noble lineage. If you are a deviant unbeliever without *taqwa*, you are base, even if you have noble lineage. Rivalry in ancestors does not bring about anything at all. How can you be arrogant and proud when you are all from dust?]

45.6b. Genealogy

The Prophet, peace be upon him, said about a man who learned the genealogies of people, "A useless knowledge and ignorance of it will not harm one."

[It is of no use either in this world or the next.]

45.6c. Useful Genealogy

'Umar said, "Learn about your lineages enough to be able to maintain ties of kinship."

[So that you know who your relatives are.]

45.6d. Malik's dislike of tracing ancestors

Malik said, "I dislike of tracing genealogies back to ancestors before Islam."

45.7. Dreams

45.7a. The General Ruling

A good dream is a forty-sixth part of prophethood. If someone has a bad dream he should spit to his left and seek the protection of Allah from the evil which he has seen.

[This is repeated because of the context.]

45.7b. Dream Interpretation

Someone who has no knowledge of the science of dreams should not interpret them, nor should he interpret it as indicative of something good when he knows that it indicates something disliked.

[This is forbidden. To give an interpretation without knowledge is lying and contrary to the words of Allah, "*Do not pursue what you have no knowledge of.*" (17:36) Changing the interpretation is forbidden because it is lying and deceit. If there is good, he mentions it. If it is something bad, he says, "Good, Allah willing."]

45.8. POETRY

There is nothing wrong in reciting poetry, but a small amount is better. One should not spend too much time with reciting or or composing it.

[This is when it does not criticise someone. One should not spend too much time on it because it is vanity and it is better to be occupied with something better.]

45.9. RELIGIOUS KNOWLEDGE

45.9a. The Best Knowledge

The best and most fitting type of knowledge and the closest to Allah is knowledge of His deen and His laws regarding what He commanded, forbade, summoned to and encouraged in His Book and on the tongue of His Prophet. One must have understanding and a grasp of that and be concerned with observing that and acting according to it.

[The knowledge which contains the religious dogma, like recognition of the Maker and knowledge of His existence and all His attributes, and knowledge of the laws which is the halal and haram, and other laws which are obligatory and recommended and what is forbidden and disliked. One should know what Allah and His Messenger, may Allah bless him and grant him peace, encouraged. One should have understanding of the deen of Allah and know its laws. Acting by it is the

best of actions and the one which will bring one closer to Allah because the fruit of knowledge is action.]

45.9b. The Best Action

Knowledge is the best of actions. The closest scholar to Allah and most entitled to Him is the one with the greatest fear of Him and desire for what is with Him. Knowledge directs to good things and guides to them.

[This is knowledge of the *deen* and the laws since the Prophet, peace and blessings be upon him, has said, "The best worship is fiqh and the best of the *deen* is scrupulousness." The Messenger of Allah, may Allah bless him and grant him peace, said, "Whoever travels a path in which he seeks knowledge, Allah will make his path to the Garden easy."]

45.9c. Refuge

Salvation lies in seeking protection in the Book of Allah Almighty and the Sunna of His Prophet and following the path of the believers and that of the best of generations of the best community produced for mankind.

[The path of the believers means consensus. The best generation are the Companions, may Allah be pleased with all of them.]

45.9d. Deliverance

Reliance on that is protection. Salvation lies in following the righteous Salaf. They are the model with regard to the interpretations which they made and the results of their deductions. Even though they differed in the secondary ruling, no should leave their group.

Praise belongs to Allah who guided us to this and were it not that Allah has guided us, we would not have been guided.

[The righteous Salaf are the first three generations of the scholars of action and the later ones described with their qualities. Interpretation is moving the expression from its literal meaning, as the Prophet, may Allah bless him and grant him peace, said, "The neighbour of the mosque has no prayer except in the mosque." That would appear that he has no sound prayer. What is indicted by the basic expression negates the reality, which is that it is absolutely invalid. One turns to what is near it, and it means it is not perfect. Because the consensus of the Companions is evidence, it is mandatory to follow it and it is forbidden to oppose it.]

EPILOGUE

Abu Muhammad 'Abdullah ibn Zayd says: "We have now done what we stipulated on ourselves to do in this book of ours. Allah willing, it will be of use to those children who desire to learn that and adults who are in need of it. What is contains will lead the ignorant to knowledge of what to believe in his deen and what obligations he must perform. It will give him much understanding of the basic principles and secondary rulings of fiqh as well as the sunnas, desirable practices and manners.

I ask Allah Almighty to let us and you benefit by what we know and to help us and you perform what we owe Him in what He obliged on us. There is no power nor strength except by Allah, the All-Knowing, Immense. May Allah bless our master Muhammad, His Prophet, and his family and Companions and grant them much peace.